



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 22 सितम्बर, 2014 / 31 भाद्रपद, 1936

हिमाचल प्रदेश सरकार

MPP & POWER DEPARTMENT

NOTIFICATION

Shimla-2, the 10th September, 2014

No. MPP-F(10)-17/2012.—In modification of all previous orders/notifications in this regard issued by this department from time to time, the Governor, Himachal Pradesh, in exercise of the powers conferred by Section 11(I) of the Himachal Pradesh Electricity (Duty) Act, 2009, as amended from time to time, is pleased to order reduction in Electricity Duty in respect of industrial

units in the State of Himachal Pradesh with effect from 1st April, 2014 as below and the revised rate will be applicable in the following manner:—

Sl. No.	Category	Existing Rate of Electricity Duty for Industrial consumers	Revised Rate of Electricity Duty chargeable w.e.f. 01-04-2014 for Industrial consumers except Cement Industries
1.	Extra High Tension (EHT) category consumers (Large Industrial consumers) (supply voltage exceeding 33 KV).	17%	15%
2.	Large Industrial consumers (above 100 KW connected load and supply voltage not exceeding 33KV).	17% & 15%	13%
3.1	Medium Industrial consumers	15%	13%
3.2.	Medium Industrial units set up after 1-4-2012	10%	10%
3.3.	New Medium Industrial Units set up after 1-4-2014.	15%	5% for 5 years
4.1.	Existing Small Industry consumers	9%	7%
4.2	Small Industry set up after 1-4-2012	4%	4%
4.3	New Small Industries set up after 1-4-2014	4%	2% for 5 years
5.	New Industry including EHT category which employ more than 300 Himachalis.	-	2% for 5 years.

By order,
(S. K. B. S NEGI)
Principal Secretary (Power).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 18th September, 2014

No: Sharm (A) 7-1/2005-Part-File-1.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Department of Labour & Employment, Government of Himachal Pradesh.

Sl. No.	Case No.	Title of the Case	Date of Award
1.	62/2009	S/Shri Prem Chand V/s Executive Engineer, I&PH Rampur.	23-08-2014
2.	63/2009	Sh. Ram Sen V/s -do-	23-08-2014
3.	64/2009	Sh. Chunni Lal V/S -do-	23-08-2014
4.	65/2009	Sh. Sant Ram V/S -do-	23-08-2014
5.	66/2009	Sh. Adha Singh V/s -do-	23-08-2014
6.	67/2009	Sh. Jawhar Lal V/s -do-	23-08-2014
7.	80/2010	Sh. Hardiyal Singh V/s -do-	23-08-2014
8.	41/2009	Sh. Krishan Lal Sharma V/s Secty, M/s Bhojia Dental College & Hospital & Others.	26-08-2014
9.	05/2011	Sh. Lachman Chand V/s M/S VVF Ltd. Baddi.	26-08-2014
10.	54/2010	Sh. Ram Krishan V/s Principal Secty (MPP&Power) & Others.	29-08-2014
11.	151/2001	Sh. Ranjeet Singh V/s H.P. State Electricity Boards & Others.	14-08-2014
12.	118/2010	Sh. Ravinder V/s HPPWD, Shimla.	13-08-2014

By order,
(R.D. DHIMAN)
Pr. Secretary (Labour & Employment).

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM LABOUR COURT, SHIMLA

Ref no. 62 of 2009

Instituted on 17.8.2009

Re-registered on old no. after remand on 1.7.2014

Decided on 23.8.2014

Prem Chand S/o Shri Pasu Ram R/o Village, Punan, P.O & Sub Tehsil, Nankhari, District Shimla, H.P.

Petitioner.....

V/S.

The Executive Engineer, IPH Division Rampur Bushahr, District Shimla, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate.

For respondents: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of ShriPrem Chand S/o Shri Pashu Ram by the Executive Engineer, IPH Division Rampur Bushahr, District Shimla w.e.f. 29.6.2000 without following the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits including seniority and compensation the above workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was engaged as daily waged beldar on 10.10.1996, in IPH Sub-Division, Nankhari, by the respondent. In each calendar year, he had completed 240 days, including twelve calendar months, preceding his termination/retrenchment, which took place on 29.6.2000. It is alleged that his services were terminated without issuing any notice. After his termination, the respondent engaged junior persons namely Prem S/o Shri Sita Ram and some other persons who are still working with the respondent. In this way, provisions of section 25 G & H of the Act, were also violated. It is further averred that since his termination i.e 29.6.2000, he had been making requests, orally as well as in writing, to the respondent for his reinstatement but of no avail. After his termination, he has not been gainfully employed. Against this back-drop, a prayer has been made for his reinstatement along-with all service benefits.

3. The petition has been contested on having raised preliminary objections qua maintainability and limitation. It has been specifically averred that although, the petitioner had been allegedly retrenched in the year, 2000 but he filed his claim, before this Court, after more than nine years. On merits, it has been asserted that the petitioner, who had been engaged as beldar in September, 1996, worked intermittently till 2000. He had never worked for 240 days in every calendar year. In the month of September, 2000, he had abandoned his job. It is further averred that in the year, 1998, one Shri Prem Chand S/o Shri Sita Ram was engaged as work inspector whose category is different from the petitioner.

4. Pleadings of the parties gave rise to the following issues, which were struck on 15.6.2010.

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is barred by limitation?

OPR.....

4. Relief.

5. Here, I would like to point-out that vide award dated 25.2.2012, passed by this Court, whereas issue no.1 was decided in "Yes", the petitioner was held entitled for reinstatement with seniority and continuity in service but without back-wages, while deciding issue no.2. The answer to issue no.3 was in "No". Consequently, upon the findings, recorded on the aforesaid issues, the petitioner was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without wages.

6. From the order dated 23.6.2014, passed by the Hon'ble High Court in LPA No. 87 of 2014 along-with LPA's No. 88-89-90-91-95 and 96 of 2014, it appears that the award of this Court dated 25.2.2012, had been challenged/assailed by the State of HP and another by filing six writ petitions being CWP No. 6591/2012, titled as State of Himachal Pradesh & another versus Hardyal Singh, CWP No. 6601/2012, titled as State of Himachal Pradesh & another versus Ram Sen, CWP No. 6602/2012, titled as State of Himachal Pradesh & another versus Sant Ram, 6603/2012, titled as State of Himachal Pradesh & another versus Jawahar Lal, CWP No.6604/2012, titled as State of Himachal Pradesh & another versus Chunni Lal and CWP 6605/2012, titled as State of Himachal Pradesh & another versus Prem Chand, which came to be decided by way of dismissal by common judgment dated 17.6.2013, of the Hon'ble High Court (Writ Court). It is further borne out from the order of the Hon'ble High Court dated 23.6.2014, the Writ Court in CWP No. 6599 of 2012, titled as State of HP and another Vs. Adha Singh, had dismissed the writ petition, filed by State of HP and another, vide judgment and order dated 18.7.2013.

7. Against the judgment and order dated 18.7.2013, made by the Writ Court in CWP No. 6599 of 2012, an appeal was filed which came to be registered as LPA No. 96 of 2014. Since, the facts and circumstances involved in the said case (LPA No. 96 of 2014), were found to be similar to those of other cases/appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), THE Hon'ble High Court deemed it proper to decide appeal (LPA No. 96 of 2014), alongwith other appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), by way of common judgment. The Hon'ble High Court disposed of the writ petitions by remanding the case/references with the direction to this Tribunal to decide issue no.3, within six weeks. It is relevant to reproduce the order of the Hon'ble High Court, as under:

"6. We have gone through the impugned judgment, whereby the Writ Court upheld the awards made by the Industrial Tribunal-cum-Labour Court, Shimla, H.P., hereinafter referred to as "the Tribunal", in Reference No. 80 of 2010, dated 25.02.2010, Reference No. 63 of 2009, dated 25.02.2012, Reference No. 65 of 2009, dated 25.02.2012, Reference No. 67 of 2009, dated 25.02.2012 and Reference No. 62 of 2009, dated 25.02.2012.

7. While examining the awards passed by the Tribunal, one comes to an inescapable conclusion that the Tribunal has not determined Issue No. 3, which reads as under:-

"3. Whether this petition is barred by limitation?

....OPR"

8. After noticing the contentions of the learned Counsel for the parties, we asked the learned Counsel for the respondent(s) to defend the impugned judgment made by the Writ Court as well as the award made by the Tribunal.

9. **At this stage, learned Counsel for the parties stated at the Bar that the Tribunal be directed to determine Issue No. 3 within a short period of time and to grant opportunity to the parties for leading evidence. Ordered accordingly.**
 10. **Accordingly, all the appeals are allowed. The impugned judgment is set-aside.**
 11. **The writ petitions are disposed of by remanding the cases/references with the direction to the Tribunal to decide Issue No. 3, within six weeks, as indicated above.**
 12. **Parties to appear before the Tribunal on 1st July, 2014.**
 13. **It is made clear that in case any party feels aggrieved, they are at liberty to question the findings already returned by the Tribunal along-with the findings on Issue No. 3.”**
8. As directed by the Hon’ble High Court, this Court is to determine issue no.3, which reads as under:

3. Whether this petition is barred by limitation?

....OPR

4. Relief.

9. Pursuant to the order of Hon’ble High Court, both the parties were afforded opportunities to lead their evidence on issue no.3. Whereas, respondent examined Shri Rasveer Singh Negi (RW-2), in support of issue no.3, the petitioner examined Shri Dila Ram (PW-3), Shri Sohan Lal Jalota (PW-4) and himself (PW-5), in order to rebut the evidence led by the respondent on this issue.

10. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issue no.3 for determination, my findings on this issue are as under.

Issue No. 3 No.

Relief. Reference stands answered accordingly.

Reasons for findings

Issue No. 3.

12. On behalf of respondent, it has been argued with vehemence that the petition filed by the petitioner before this Court, is hopelessly time barred because the same was filed after more than nine years. By referring to the statement of Shri Rasveer Singh Negi (RW- 2), it was further urged that in the month of June, 2000, the petitioner had not served any demand notice. Only, in the year, 2008, demand notice had been served. Thus, the petitioner had not served any demand notice during the period w.e.f. 2000 to 2008. It was further urged that from the evidence of Shri Jasveer Singh Negi (RW-2), it stands duly proved that the claim of the petitioner is barred by limitation.

13. On the other hand, Ld. Counsel for the petitioner urged that from the statement of Shri Sohan Lal Jalota (PW-4), it is abundantly clear that the office of Executive Engineer, IPH Rampur had received demand notice vide dairy no. 95 dated 10.6.2002 and reply thereto had also been filed. Thereafter, the Labour-cum-Conciliation Officer had issued letter to Prem Chand (petitioner). Since, at that time, the petitioner was found to have already filed an OA before Administrative Tribunal, Shimla, the Labour-cum-Conciliation Officer temporarily kept in abeyance the proceedings till further orders and in this regard letter is Ex. PW-4/B. Ld. Counsel further submitted that when it was known by the petitioner that his OA had been dismissed, he filed another application to the Labour-cum-Conciliation Officer, Rampur on 16.5.2008, in order to get revived the conciliation proceedings. To that application, the respondent had filed reply, during the course of conciliation proceedings, on 6.6.2008.

Thereafter, a report, under section 12 (4) of the Act, had been submitted to the Labour Commissioner, Shimla, vide Ex. PW-4/E. Thus, the Ld. Counsel urged that there had been no delay/latches on the part of the petitioner to pursue his case. Ld. Counsel further urged that even the petitioner when examined himself as PW-5, also stated that when his services had been terminated, he approached the Administrative Tribunal, in the year, 2000 and during the pendency of OA, he had raised demand notice on 30.5.2002 and in consequence thereof, conciliation proceedings were initiated before Labour-cum-Conciliation Officer. As per letter dated 28.8.2002, he (PW-5), had been informed that the conciliation proceedings had been kept in abeyance. From his Advocate, he had known that in the year, 2004, his case/OA had been dismissed by the Administrative Tribunal, the copy of which, he procured in the year, 2008 and thereafter filed application for revival of conciliation proceedings. Ld. Counsel, on the evidence of the petitioner (PW-5), further urged that the same clearly goes to show that there had been no lapse on the part of the petitioner in order to pursue his case. Thus, it cannot be said that the claim of the petitioner is barred by limitation.

14. From the evidence of PW-4 (labour Inspector, Rampur), it is quite clear that the petitioner, after his retrenchment, had raised demand notice, copy of which is Ex. PW-4/A and in consequence thereof conciliation proceedings had been initiated by Labour-cum-Conciliation Officer, Rampur. Since, during those proceedings, it had been found that the petitioner had also filed OA before Administrative Tribunal against his dismissal/retrenchment, the conciliation proceedings were kept in abeyance and regarding the same the petitioner was informed by letter, copy of which is Ex. PW- 4/B. The evidence of this witness further makes it clear that on 16.5.2008, the petitioner had again submitted an application for getting revived the conciliation proceedings.

Undoubtedly, in the evidence of RW-2 (Rasveer Singh Negi), it has come that during the period w.e.f. 2000 to 2008, the petitioner had not raised any demand notice but his such version gets falsified from the evidence of Shri Sohan Lal Jalota (PW-4), posted as Labour Inspector Rampur, who has stated, on the basis of summoned record, brought by him. I may also like to mention that Ex. PW-4/D, is the copy of demand notice dated 16.5.2008. In this demand notice, the petitioner has made it clear that after his termination, he had filed a case before HP Administrative Tribunal and for this reason, he was informed vide letter dated 28.8.2002, by the Labour-cum-Conciliation Officer, Rampur, that conciliation proceedings could not be taken further as the same could not have been processed simultaneously in two separate Courts. It has also been clarified in this notice that regarding the status of his original application, which was dismissed on 6.8.2004, he had come to know in the month of April, 2008, when he visited the registry of the Administrative Tribunal.

15. The evidence, aforesaid, as well as documents, referred to above, clearly go to show that immediately after his dismissal, the petitioner had filed a case, before the Administrative Tribunal and that during the pendency of the same, he had also raised a demand notice before his

employer, the copy of which is Ex. PW-4/A, and on its basis, conciliation proceedings had been initiated by the Labour-cum-Conciliation Officer, Rampur. The petitioner had been informed vide letter Ex. PW-4/B, that conciliation proceedings had been kept in abeyance/under-suspension. It has been rightly argued on behalf of the petitioner that there had been no lapse on his part to pursue his case either before Administrative Tribunal or the Labour-cum-Conciliation Officer, Rampur.

16. It has been held by the **Hon'ble Apex Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SC 496** that :

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

17. On the basis of the case law (Supra, it cannot be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

18. From the language of this section, it appears that the Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication.

In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

19. In the instant case, the conciliation proceedings which had been suspended/kept in abeyance vide letter dated 28.8.2002, copy of which is Ex. PW-4/B, were requested to be revived by demand notice dated 26.5.2008, copy of which is Ex. PW-4/D. Thereafter, the reference to this Court was made by the appropriate government on 11.8.2009. This goes to show that in the opinion of the Government, an industrial dispute existed on the date, when the reference for adjudication was made.

20. When, the reference came to be made to this Court, by the appropriate government, notices were issued to both the parties and in consequence thereof, the petitioner filed his claim/petition. An objection has been taken by the respondent that his such petition is barred by limitation. I may mention that consequent upon the making of reference, to this Court, by the appropriate government, the petitioner has filed statement of claim. It is not understandable as to how it is barred by limitation. Already, I have stated and observed above that mere delay in challenging the termination would not be a bar to the adjudication of the dispute/matter. Moreover,

it has been held by the **Hon'ble Supreme Court, in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

21. Having regard to the law laid down (supra) and also my discussion, foregoing, I hold that the respondent has failed to prove that this petition is barred by limitation. Thus, my answer to this issue is in “No”.

Relief

Resultantly, as per the directions of Hon'ble High court vide order dated 23.6.2014, as referred to above, I decide issue no.3 in negative. This award/order shall form part and parcel of earlier award dated 25.2.2012, passed by this Court. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 23rd day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA

Ref no. 63 of 2009.

Instituted on 17.8.2009.

Re-registered on old no. after remand on 1.7.2014.

Decided on 23.8.2014.

Ram Sen S/o Shri Muglu Ram, Village Banoga, Sub Tehsil, Nankhari, District Shimla, HP.
Petitioner.....

VS.

The Executive Engineer, IPH Division Rampur Bushahr, District Shimla, H.P.
Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate.

For respondents: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of Shri Ram Sen S/o Shri Muglu Ram by the Executive Engineer, IPH Division Rampur Bushahr, District Shimla w.e.f. 29.6.2000 while workers junior to him have been retained, is proper and justified? If not, what relief of service benefits including reinstatement and compensation the above workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was engaged as daily waged beldar on 10.10.1996, in IPH Sub-Division, Nankhari, by the respondent. In each calendar year, he had completed 240 days, including twelve calendar months, preceding his termination/retrenchment, which took place on 29.6.2000. It is alleged that his services were terminated without issuing any notice. After his termination, the respondent engaged junior persons namely Prem S/o Shri Sita Ram and some other persons who are still working with the respondent. In this way, provisions of section 25 G & H of the Act, were also violated. It is further averred that since his termination i.e 29.6.2000, he had been making requests, orally as well as in writing, to the respondent for his reinstatement but of no avail. After his termination, he has not been gainfully employed. Against this back-drop, a prayer has been made for his reinstatement along-with all service benefits.

3. The petition has been contested on having raised preliminary objections qua maintainability and limitation. It has been specifically averred that although, the petitioner had been allegedly retrenched in the year, 2000 but he filed his claim, before this Court, after more than nine years. On merits, it has been asserted that the petitioner, who had been engaged as beldar in June, 1996, worked intermittently till 2000. He had never worked for 240 days in every calendar year. In the month of June, 2000, he had abandoned his job. It is further averred that in the year, 1998, one Shri Prem Chand S/o Shri Sita Ram was engaged as work inspector whose category is different from the petitioner.

4. Pleadings of the parties gave rise to the following issues, which were struck on 15.6.2010.

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is barred by limitation?

OPR.....

4. Relief.

5. Here, I would like to point-out that vide award dated 25.2.2012, passed by this Court, whereas issue no.1 was decided in “Yes”, the petitioner was held entitled for reinstatement with seniority and continuity in service but without back-wages, while deciding issue no.2. The answer to issue no.3 was in “No”. Consequent, upon the findings, recorded on the aforesaid issues, the petitioner was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without wages.

6. From the order dated 23.6.2014, passed by the Hon’ble High Court in LPA No. 87 of 2014 along-with LPA’s No. 88-89-90-91-95 and 96 of 2014, it appears that the award of this Court dated 25.2.2012, had been challenged/assailed by the State of HP and another by filing six writ petitions being CWP No. 6591/2012, titled as State of Himachal Pradesh & another versus Hardyal Singh, CWP No. 6601/2012, titled as State of Himachal Pradesh & another versus Ram Sen, CWP No. 6602/2012, titled as State of Himachal Pradesh & another versus Sant Ram, 6603/2012, titled as State of Himachal Pradesh & another versus Jawahar Lal, CWP No.6604/2012, titled as State of Himachal Pradesh & another versus Chunni Lal and CWP 6605/2012, titled as State of Himachal Pradesh & another versus Prem Chand, which came to be decided by way of dismissal by common judgment dated 17.6.2013, of the Hon’ble High Court (Writ Court). It is further borne out from the order of the Hon’ble High Court dated 23.6.2014, the Writ Court in CWP No. 6599 of 2012, titled as State of HP and another Vs. Adha Singh, had dismissed the writ petition, filed by State of HP and another, vide judgment and order dated 18.7.2013.

7. Against the judgment and order dated 18.7.2013, made by the Writ Court in CWP No. 6599 of 2012, an appeal was filed which came to be registered as LPA No. 96 of 2014. Since, the facts and circumstances involved in the said case (LPA No. 96 of 2014), were found to be similar to those of other cases/appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), THE Hon’ble High Court deemed it proper to decide appeal (LPA No. 96 of 2014), alongwith other appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), by way of common judgment. The Hon’ble High Court disposed of the writ petitions by remanding the case/references with the direction to this Tribunal to decide issue no.3, within six weeks. It is relevant to reproduce the order of the Hon’ble High Court, as under:

“6. We have gone through the impugned judgment, whereby the Writ Court upheld the awards made by the Industrial Tribunal-cum-Labour Court, Shimla, H.P., hereinafter referred to as “the Tribunal”, in Reference No. 80 of 2010, dated 25.02.2010, Reference No. 63 of 2009, dated 25.02.2012, Reference No. 65 of 2009, dated 25.02.2012, Reference No. 67 of 2009, dated 25.02.2012 and Reference No. 62 of 2009, dated 25.02.2012.

7. While examining the awards passed by the Tribunal, one comes to an inescapable conclusion that the Tribunal has not determined Issue No. 3, which reads as under:-

“3. Whether this petition is barred by limitation?

....OPR”

8. After noticing the contentions of the learned Counsel for the parties, we asked the learned Counsel for the respondent(s) to defend the impugned judgment made by the Writ Court as well as the award made by the Tribunal.

9. At this stage, learned Counsel for the parties stated at the Bar that the Tribunal be directed to determine Issue No. 3 within a short period of time and to grant opportunity to the parties for leading evidence. Ordered accordingly.

10. Accordingly, all the appeals are allowed. The impugned judgment is set-aside.
11. The writ petitions are disposed of by remanding the cases/references with the direction to the Tribunal to decide Issue No. 3, within six weeks, as indicated above.
12. Parties to appear before the Tribunal on 1st July, 2014.
13. It is made clear that in case any party feels aggrieved, they are at liberty to question the findings already returned by the Tribunal along-with the findings on Issue No. 3.”

8. As directed by the Hon’ble High Court, this Court is to determine issue no.3, which reads as under:

3. Whether this petition is barred by limitation?

....OPR

4. Relief.

9. Pursuant to the order of Hon’ble High Court, both the parties were afforded opportunities to lead their evidence on issue no.3. Whereas, respondent examined Shri Rasveer Singh Negi (RW-2), in support of issue no.3, the petitioner examined Shri Dila Ram (PW-3), Shri Sohan Lal Jalota (PW-4) and himself (PW-5), in order to rebut the evidence led by the respondent on this issue.

10. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issue no.3 for determination, my findings on this issue are as under.

Issue No.3 No.

Relief. Reference stands answered accordingly.

Reasons for findings

Issue No.3.

12. On behalf of respondent, it has been argued with vehemence that the petition filed by the petitioner before this Court, is hopelessly time barred because the same was filed after more than nine years. By referring to the statement of Shri Rasveer Singh Negi (RW- 2), it was further urged that in the month of June, 2000, the petitioner had not served any demand notice. Only, in the year, 2008, demand notice had been served. Thus, the petitioner had not served any demand notice during the period w.e.f. 2000 to 2008. It was further urged that from the evidence of Shri Jasveer Singh Negi (RW-2), it stands duly proved that the claim of the petitioner is barred by limitation.

13. On the other hand, Ld. Counsel for the petitioner urged that from the statement of Shri Sohan Lal Jalota (PW-4), it is abundantly clear that the office of Executive Engineer, IPH Rampur had received demand notice vide dairy no. 95 dated 10.6.2002 and reply thereto had also been filed.

Thereafter, the Labour-cum-Conciliation Officer had issued letter to Prem Chand (petitioner). Since, at that time, the petitioner was found to have already filed an OA before Administrative Tribunal, Shimla, the Labour-cum-Conciliation Officer temporarily kept in abeyance the proceedings till further orders and in this regard letter is Ex. PW-4/B. Ld. Counsel further submitted that when it was known by the petitioner that his OA had been dismissed, he filed another application to the Labour-cum-Conciliation Officer, Rampur on 16.5.2008, in order to get revived the conciliation proceedings. To that application, the respondent had filed reply, during the course of conciliation proceedings, on 6.6.2008.

Thereafter, a report, under section 12 (4) of the Act, had been submitted to the Labour Commissioner, Shimla, vide Ex. PW-4/E. Thus, the Ld. Counsel urged that there had been no delay/latches on the part of the petitioner to pursue his case. Ld. Counsel further urged that even the petitioner when examined himself as PW-5, also stated that when his services had been terminated, he approached the Administrative Tribunal, in the year, 2000 and during the pendency of OA, he had raised demand notice on 30.5.2002 and in consequence thereof, conciliation proceedings were initiated before Labour-cum-Conciliation Officer. As per letter dated 28.8.2002, he (PW-5), had been informed that the conciliation proceedings had been kept in abeyance. From his Advocate, he had known that in the year, 2004, his case/OA had been dismissed by the Administrative Tribunal, the copy of which, he procured in the year, 2008 and thereafter filed application for revival of conciliation proceedings. Ld. Counsel, on the evidence of the petitioner (PW-5), further urged that the same clearly goes to show that there had been no lapse on the part of the petitioner in order to pursue his case. Thus, it cannot be said that the claim of the petitioner is barred by limitation.

14. From the evidence of PW-4 (labour Inspector, Rampur), it is quite clear that the petitioner, after his retrenchment, had raised demand notice, copy of which is Ex. PW-4/A and in consequence thereof conciliation proceedings had been initiated by Labour-cum-Conciliation Officer, Rampur. Since, during those proceedings, it had been found that the petitioner had also filed OA before Administrative Tribunal against his dismissal/retrenchment, the conciliation proceedings were kept in abeyance and regarding the same the petitioner was informed by letter, copy of which is Ex. PW- 4/B. The evidence of this witness further makes it clear that on 16.5.2008, the petitioner had again submitted an application for getting revived the conciliation proceedings. Undoubtedly, in the evidence of RW-2 (Rasveer Singh Negi), it has come that during the period w.e.f. 2000 to 2008, the petitioner had not raised any demand notice but his such version gets falsified from the evidence of Shri Sohan Lal Jalota (PW-4), posted as Labour Inspector Rampur, who has stated, on the basis of summoned record, brought by him. I may also like to mention that Ex. PW-4/D, is the copy of demand notice dated 15.5.2008. In this demand notice, the petitioner has made it clear that after his termination, he had filed a case before HP Administrative Tribunal and for this reason, he was informed vide letter dated 28.8.2002, by the Labour-cum-Conciliation Officer, Rampur, that conciliation proceedings could not be taken further as the same could not have been processed simultaneously in two separate Courts. It has also been clarified in this notice that regarding the status of his original application, which was dismissed on 6.8.2004, he had come to know in the month of April, 2008, when he visited the registry of the Administrative Tribunal.

15. The evidence, aforesaid, as well as documents, referred to above, clearly go to show that immediately after his dismissal, the petitioner had filed a case, before the Administrative Tribunal and that during the pendency of the same, he had also raised a demand notice before his employer, the copy of which is Ex. PW-4/A, and on its basis, conciliation proceedings had been initiated by the Labour-cum-Conciliation Officer, Rampur. The petitioner had been informed vide letter Ex. PW-4/B, that conciliation proceedings had been kept in abeyance/under-suspension. It

has been rightly argued on behalf of the petitioner that there had been no lapse on his part to pursue his case either before Administrative Tribunal or the Labour-cum-Conciliation Officer, Rampur.

16. It has been held by the **Hon'ble Apex Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SC 496** that :

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

17. On the basis of the case law (Supra, it cannot be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

18. From the language of this section, it appears that the Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication. In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

19. In the instant case, the conciliation proceedings which had been suspended/kept in abeyance vide letter dated 28.8.2002, copy of which is Ex. PW-4/B, were requested to be revived by demand notice dated 26.5.2008, copy of which is Ex. PW-4/D. Thereafter, the reference to this Court was made by the appropriate government on 11.8.2009. This goes to show that in the opinion of the Government, an industrial dispute existed on the date, when the reference for adjudication was made.

20. When, the reference came to be made to this Court, by the appropriate government, notices were issued to both the parties and in consequence thereof, the petitioner filed his claim/petition. An objection has been taken by the respondent that his such petition is barred by limitation. I may mention that consequent upon the making of reference, to this Court, by the appropriate government, the petitioner has filed statement of claim. It is not understandable as to how it is barred by limitation. Already, I have stated and observed above that mere delay in challenging the termination would not be a bar to the adjudication of the dispute/matter. Moreover, it has been held by the **Hon'ble Supreme Court, in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved

as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

21. Having regard to the law laid down (supra) and also my discussion, foregoing, I hold that the respondent has failed to prove that this petition is barred by limitation. Thus, my answer to this issue is in “No”.

Relief

Resultantly, as per the directions of Hon’ble High court vide order dated 23.6.2014, as referred to above, I decide issue no.3 in negative. This award/order shall form part and parcel of earlier award dated 25.2.2012, passed by this Court. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 23rd day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA

Ref no. 64 of 2009

Instituted on 17.8.2009.

Re-registered on old no. after remand on 1.7.2014

Decided on 23.8.2014

Chuni Lal S/o Shri Amar Dass R/o Village Than, P.O & Sub Tehsil, Nankhari, District Shimla,
H.P.

Petitioner.....

VS.

The Executive Engineer, IPH Division Rampur Bushahr, District Shimla, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate.

For respondents: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of Shri Chuni Lal S/o Shri amar Dass by the Executive Engineer, IPH Division Rampur Bushahr, District Shimla w.e.f. 29.6.2000 while workers junior to him have been kept, is proper and justified? If not, what relief of service benefits including seniority and compensation the above workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was engaged as daily waged beldar on 10.10.1996, in IPH Sub-Division, Nankhari, by the respondent. In each calendar year, he had completed 240 days, including twelve calendar months, preceding his termination/retrenchment, which took place on 29.6.2000. It is alleged that his services were terminated without issuing any notice. After his termination, the respondent engaged junior persons namely Prem S/o Shri Sita Ram and some other persons who are still working with the respondent. In this way, provisions of section 25 G & H of the Act, were also violated. It is further averred that since his termination i.e 29.6.2000, he had been making requests, orally as well as in writing, to the respondent for his reinstatement but of no avail. After his termination, he has not been gainfully employed. Against this back-drop, a prayer has been made for his reinstatement along-with all service benefits.

3. The petition has been contested on having raised preliminary objections qua maintainability and limitation. It has been specifically averred that although, the petitioner had been allegedly retrenched in the year, 2000 but he filed his claim, before this Court, after more than nine years. On merits, it has been asserted that the petitioner, who had been engaged as beldar in September, 1996, worked intermittently till June, 2000. He had never worked for 240 days in every calendar year. In the month of June, 2000, he had abandoned his job. It is further averred that in the year, 1998, one Shri Prem Chand S/o Shri Sita Ram was engaged as work inspector whose category is different from the petitioner.

4. Pleadings of the parties gave rise to the following issues, which were struck on 15.6.2010.

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is barred by limitation?

OPR.....

4. Relief.

5. Here, I would like to point-out that vide award dated 25.2.2012, passed by this Court, whereas issue no.1 was decided in “Yes”, the petitioner was held entitled for reinstatement with seniority and continuity in service but without back-wages, while deciding issue no.2. The answer to issue no.3 was in “No”. Consequent, upon the findings, recorded on the aforesaid issues, the petitioner was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without wages.

6. From the order dated 23.6.2014, passed by the Hon'ble High Court in LPA No. 87 of 2014 along-with LPA's No. 88-89-90-91-95 and 96 of 2014, it appears that the award of this Court dated 25.2.2012, had been challenged/assailed by the State of HP and another by filing six writ petitions being CWP No. 6591/2012, titled as State of Himachal Pradesh & another versus Hardyal Singh, CWP No. 6601/2012, titled as State of Himachal Pradesh & another versus Ram Sen, CWP No. 6602/2012, titled as State of Himachal Pradesh & another versus Sant Ram, 6603/2012, titled as State of Himachal Pradesh & another versus Jawahar Lal, CWP No. 6604/2012, titled as State of Himachal Pradesh & another versus Chunni Lal and CWP 6605/2012, titled as State of Himachal Pradesh & another versus Prem Chand, which came to be decided by way of dismissal by common judgment dated 17.6.2013, of the Hon'ble High Court (Writ Court). It is further borne out from the order of the Hon'ble High Court dated 23.6.2014, the Writ Court in CWP No. 6599 of 2012, titled as State of HP and another Vs. Adha Singh, had dismissed the writ petition, filed by State of HP and another, vide judgment and order dated 18.7.2013.

7. Against the judgment and order dated 18.7.2013, made by the Writ Court in CWP No. 6599 of 2012, an appeal was filed which came to be registered as LPA No. 96 of 2014. Since, the facts and circumstances involved in the said case (LPA No. 96 of 2014), were found to be similar to those of other cases/appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), THE Hon'ble High Court deemed it proper to decide appeal (LPA No. 96 of 2014), alongwith other appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), by way of common judgment. The Hon'ble High Court disposed of the writ petitions by remanding the case/references with the direction to this Tribunal to decide issue no.3, within six weeks. It is relevant to reproduce the order of the Hon'ble High Court, as under:

"6. We have gone through the impugned judgment, whereby the Writ Court upheld the awards made by the Industrial Tribunal-cum-Labour Court, Shimla, H.P., hereinafter referred to as "the Tribunal", in Reference No. 80 of 2010, dated 25.02.2010, Reference No. 63 of 2009, dated 25.02.2012, Reference No. 65 of 2009, dated 25.02.2012, Reference No. 67 of 2009, dated 25.02.2012 and Reference No. 62 of 2009, dated 25.02.2012.

7. While examining the awards passed by the Tribunal, one comes to an inescapable conclusion that the Tribunal has not determined Issue No. 3, which reads as under:-

"3. Whether this petition is barred by limitation?

....OPR"

8. After noticing the contentions of the learned Counsel for the parties, we asked the learned Counsel for the respondent(s) to defend the impugned judgment made by the Writ Court as well as the award made by the Tribunal.

9. At this stage, learned Counsel for the parties stated at the Bar that the Tribunal be directed to determine Issue No. 3 within a short period of time and to grant opportunity to the parties for leading evidence. Ordered accordingly.

10. Accordingly, all the appeals are allowed. The impugned judgment is set-aside.

11. The writ petitions are disposed of by remanding the cases/references with the direction to the Tribunal to decide Issue No. 3, within six weeks, as indicated above.

12. Parties to appear before the Tribunal on 1st July, 2014.**13. It is made clear that in case any party feels aggrieved, they are at liberty to question the findings already returned by the Tribunal along-with the findings on Issue No. 3.”**

8. As directed by the Hon'ble High Court, this Court is to determine issue no.3, which reads as under:

3. Whether this petition is barred by limitation?

....OPR

4. Relief.

9. Pursuant to the order of Hon'ble High Court, both the parties were afforded opportunities to lead their evidence on issue no.3. Whereas, respondent examined Shri Rasveer Singh Negi (RW-2), in support of issue no.3, the petitioner examined Shri Dila Ram (PW-3), Shri Sohan Lal Jalota (PW-4) and himself (PW-5), in order to rebut the evidence led by the respondent on this issue.

10. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issue no.3 for determination, my findings on this issue are as under.

Issue No. 3 No.

Relief. Reference stands answered accordingly.

Reasons for Findings***Issue No. 3.***

12. On behalf of respondent, it has been argued with vehemence that the petition filed by the petitioner before this Court, is hopelessly time barred because the same was filed after more than nine years. By referring to the statement of Shri Rasveer Singh Negi (RW-2), it was further urged that in the month of June, 2000, the petitioner had not served any demand notice. Only, in the year, 2008, demand notice had been served. Thus, the petitioner had not served any demand notice during the period w.e.f. 2000 to 2008. It was further urged that from the evidence of Shri Jasveer Singh Negi (RW-2), it stands duly proved that the claim of the petitioner is barred by limitation.

13. On the other hand, Ld. Counsel for the petitioner urged that from the statement of Shri Sohan Lal Jalota (PW-4), it is abundantly clear that the office of Executive Engineer, IPH Rampur had received demand notice vide dairy no. 95 dated 10.6.2002 and reply thereto had also been filed. Thereafter, the Labour-cum-Conciliation Officer had issued letter to Prem Chand (petitioner). Since, at that time, the petitioner was found to have already filed an OA before Administrative Tribunal, Shimla, the Labour-cum-Conciliation Officer temporarily kept in abeyance the proceedings till further orders and in this regard letter is Ex. PW-4/B. Ld. Counsel further submitted that when it was known by the petitioner that his OA had been dismissed, he filed another application to the Labour-cum-Conciliation Officer, Rampur on 16.5.2008, in order to get revived the conciliation proceedings. To that application, the respondent had filed reply, during the

course of conciliation proceedings, on 6.6.2008. Thereafter, a report, under section 12 (4) of the Act, had been submitted to the Labour Commissioner, Shimla, vide Ex. PW-4/E. Thus, the Ld. Counsel urged that there had been no delay/laches on the part of the petitioner to pursue his case. Ld. Counsel further urged that even the petitioner when examined himself as PW-5, also stated that when his services had been terminated, he approached the Administrative Tribunal, in the year, 2000 and during the pendency of OA, he had raised demand notice on 30.5.2002 and in consequence thereof, conciliation proceedings were initiated before Labour-cum-Conciliation Officer. As per letter dated 28.8.2002, he (PW-5), had been informed that the conciliation proceedings had been kept in abeyance. From his Advocate, he had known that in the year, 2004, his case/OA had been dismissed by the Administrative Tribunal, the copy of which, he procured in the year, 2008 and thereafter filed application for revival of conciliation proceedings. Ld. Counsel, on the evidence of the petitioner (PW-5), further urged that the same clearly goes to show that there had been no lapse on the part of the petitioner in order to pursue his case. Thus, it cannot be said that the claim of the petitioner is barred by limitation.

14. From the evidence of PW-4 (labour Inspector, Rampur), it is quite clear that the petitioner, after his retrenchment, had raised demand notice, copy of which is Ex. PW-4/A and in consequence thereof conciliation proceedings had been initiated by Labour-cum-Conciliation Officer, Rampur. Since, during those proceedings, it had been found that the petitioner had also filed OA before Administrative Tribunal against his dismissal/retrenchment, the conciliation proceedings were kept in abeyance and regarding the same the petitioner was informed by letter, copy of which is Ex. PW- 4/B. The evidence of this witness further makes it clear that on 16.5.2008, the petitioner had again submitted an application for getting revived the conciliation proceedings. Undoubtedly, in the evidence of RW-2 (Rasveer Singh Negi), it has come that during the period w.e.f. 2000 to 2008, the petitioner had not raised any demand notice but his such version gets falsified from the evidence of Shri Sohan Lal Jalota (PW-4), posted as Labour Inspector Rampur, who has stated, on the basis of summoned record, brought by him. I may also like to mention that Ex. PW-4/D, is the copy of demand notice dated 16.5.2008. In this demand notice, the petitioner has made it clear that after his termination, he had filed a case before HP Administrative Tribunal and for this reason, he was informed vide letter dated 28.8.2002, by the Labour-cum-Conciliation Officer, Rampur, that conciliation proceedings could not be taken further as the same could not have been processed simultaneously in two separate Courts. It has also been clarified in this notice that regarding the status of his original application, which was dismissed on 6.8.2004, he had come to know in the month of April, 2008, when he visited the registry of the Administrative Tribunal.

15. The evidence, aforesaid, as well as documents, referred to above, clearly go to show that immediately after his dismissal, the petitioner had filed a case, before the Administrative Tribunal and that during the pendency of the same, he had also raised a demand notice before his employer, the copy of which is Ex. PW-4/A, and on its basis, conciliation proceedings had been initiated by the Labour-cum-Conciliation Officer, Rampur. The petitioner had been informed vide letter Ex. PW-4/B, that conciliation proceedings had been kept in abeyance/under-suspension. It has been rightly argued on behalf of the petitioner that there had been no lapse on his part to pursue his case either before Administrative Tribunal or the Labour-cum-Conciliation Officer, Rampur.

16. It has been held by the **Hon'ble Apex Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SC 496** that :

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

17. On the basis of the case law (Supra, it cannot be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

18. From the language of this section, it appears that the Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication. In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

19. In the instant case, the conciliation proceedings which had been suspended/kept in abeyance vide letter dated 28.8.2002, copy of which is Ex. PW-4/B, were requested to be revived by demand notice dated 26.5.2008, copy of which is Ex. PW-4/D. Thereafter, the reference to this Court was made by the appropriate government on 11.8.2009. This goes to show that in the opinion of the Government, an industrial dispute existed on the date, when the reference for adjudication was made.

20. When, the reference came to be made to this Court, by the appropriate government, notices were issued to both the parties and in consequence thereof, the petitioner filed his claim/petition. An objection has been taken by the respondent that his such petition is barred by limitation. I may mention that consequent upon the making of reference, to this Court, by the appropriate government, the petitioner has filed statement of claim. It is not understandable as to how it is barred by limitation. Already, I have stated and observed above that mere delay in challenging the termination would not be a bar to the adjudication of the dispute/matter. Moreover, it has been held by the **Hon'ble Supreme Court, in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

21. Having regard to the law laid down (supra) and also my discussion, foregoing, I hold that the respondent has failed to prove that this petition is barred by limitation. Thus, my answer to this issue is in “No”.

Relief

Resultantly, as per the directions of Hon'ble High court vide order dated 23.6.2014, as referred to above, I decide issue no.3 in negative. This award/order shall form part and parcel of

earlier award dated 25.2.2012, passed by this Court. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 23rd day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA

Ref no. 65 of 2009

Instituted on 17.8.2009

Re-registered on old no. after remand on 1.7.2014

Decided on 23.8.2014

Sant Ram S/o Shri Kharu Ram R/o Village Lateri, P.O & Sub Tehsil, Nankhari, District Shimla, H.P.

Petitioner.....

VS.

The Executive Engineer, IPH Division Rampur Bushahr, District Shimla, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate.

For respondents: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of Shri Sant Ram S/o Shri Kharu Ram by the Executive Engineer, IPH Division Rampur Bushahr, District Shimla w.e.f. 29.6.2000 while workers junior to him have been kept, is proper and justified? If not, what relief of service benefits including seniority and compensation the above workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was engaged as daily waged beldar in the month of April, 1996, in IPH Sub-Division, Nankhari, by the respondent. In each calendar year, he had completed 240 days, including twelve calendar months, preceding his termination/retrenchment, which took place on 29.6.2000. It is alleged that his services were

terminated without issuing any notice. After his termination, the respondent engaged junior persons namely Prem S/o Shri Sita Ram and some other persons who are still working with the respondent. In this way, provisions of section 25 G & H of the Act, were also violated. It is further averred that since his termination i.e 29.6.2000, he had been making requests, orally as well as in writing, to the respondent for his reinstatement but of no avail. After his termination, he has not been gainfully employed. Against this back-drop, a prayer has been made for his reinstatement along-with all service benefits.

3. The petition has been contested on having raised preliminary objections qua maintainability and limitation. It has been specifically averred that although, the petitioner had been allegedly retrenched in the year, 2000 but he filed his claim, before this Court, after more than nine years. On merits, it has been asserted that the petitioner, who had been engaged as beldar in May, 1996, worked intermittently till June, 2000. He had never worked for 240 days in every calendar year. In the month of June, 2000, he had abandoned his job. It is further averred that in the year, 1998, one Shri Prem Chand S/o Shri Sita Ram was engaged as work inspector whose category is different from the petitioner.

4. Pleadings of the parties gave rise to the following issues, which were struck on 15.6.2010.

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is barred by limitation?

OPR.....

4. Relief.

5. Here, I would like to point-out that vide award dated 25.2.2012, passed by this Court, whereas issue no.1 was decided in "Yes", the petitioner was held entitled for reinstatement with seniority and continuity in service but without back-wages, while deciding issue no.2. The answer to issue no.3 was in "No". Consequent, upon the findings, recorded on the aforesaid issues, the petitioner was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without wages.

6. From the order dated 23.6.2014, passed by the Hon'ble High Court in LPA No. 87 of 2014 along-with LPA's No. 88-89-90-91-95 and 96 of 2014, it appears that the award of this Court dated 25.2.2012, had been challenged/assailed by the State of HP and another by filing six writ petitions being CWP No. 6591/2012, titled as State of Himachal Pradesh & another versus Hardyal Singh, CWP No. 6601/2012, titled as State of Himachal Pradesh & another versus Ram Sen, CWP No. 6602/2012, titled as State of Himachal Pradesh & another versus Sant Ram, 6603/2012, titled as State of Himachal Pradesh & another versus Jawahar Lal, CWP No.6604/2012, titled as State of Himachal Pradesh & another versus Chunni Lal and CWP 6605/2012, titled as State of Himachal Pradesh & another versus Prem Chand, which came to be decided by way of dismissal by common judgment dated 17.6.2013, of the Hon'ble High Court (Writ Court). It is further borne out from the order of the Hon'ble High Court dated 23.6.2014, the Writ Court in CWP No. 6599 of 2012, titled

as State of HP and another Vs. Adha Singh, had dismissed the writ petition, filed by State of HP and another, vide judgment and order dated 18.7.2013.

7. Against the judgment and order dated 18.7.2013, made by the Writ Court in CWP No. 6599 of 2012, an appeal was filed which came to be registered as LPA No. 96 of 2014. Since, the facts and circumstances involved in the said case (LPA No. 96 of 2014), were found to be similar to those of other cases/appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), THE Hon'ble High Court deemed it proper to decide appeal (LPA No. 96 of 2014), alongwith other appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), by way of common judgment. The Hon'ble High Court disposed of the writ petitions by remanding the case/references with the direction to this Tribunal to decide issue no.3, within six weeks. It is relevant to reproduce the order of the Hon'ble High Court, as under:

“6. We have gone through the impugned judgment, whereby the Writ Court upheld the awards made by the Industrial Tribunal-cum-Labour Court, Shimla, H.P., hereinafter referred to as “the Tribunal”, in Reference No. 80 of 2010, dated 25.02.2010, Reference No. 63 of 2009, dated 25.02.2012, Reference No. 65 of 2009, dated 25.02.2012, Reference No. 67 of 2009, dated 25.02.2012 and Reference No. 62 of 2009, dated 25.02.2012.

7. While examining the awards passed by the Tribunal, one comes to an inescapable conclusion that the Tribunal has not determined Issue No. 3, which reads as under:-

“3. Whether this petition is barred by limitation?

....OPR”

8. After noticing the contentions of the learned Counsel for the parties, we asked the learned Counsel for the respondent(s) to defend the impugned judgment made by the Writ Court as well as the award made by the Tribunal.

9. At this stage, learned Counsel for the parties stated at the Bar that the Tribunal be directed to determine Issue No. 3 within a short period of time and to grant opportunity to the parties for leading evidence. Ordered accordingly.

10. Accordingly, all the appeals are allowed. The impugned judgment is set-aside.

11. The writ petitions are disposed of by remanding the cases/references with the direction to the Tribunal to decide Issue No. 3, within six weeks, as indicated above.

12. Parties to appear before the Tribunal on 1st July, 2014.

13. It is made clear that in case any party feels aggrieved, they are at liberty to question the findings already returned by the Tribunal along-with the findings on Issue No. 3.”

8. As directed by the Hon'ble High Court, this Court is to determine issue no.3, which reads as under:

3. Whether this petition is barred by limitation?

....OPR

4. Relief.

9. Pursuant to the order of Hon'ble High Court, both the parties were afforded opportunities to lead their evidence on issue no.3. Whereas, respondent examined Shri Rasveer Singh Negi (RW-2), in support of issue no.3, the petitioner examined Shri Dila Ram (PW-3), Shri Sohan Lal Jalota (PW-4) and himself (PW-5), in order to rebut the evidence led by the respondent on this issue.

10. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issue no.3 for determination, my findings on this issue are as under.

Issue no.3 No.

Relief. Reference stands answered accordingly.

Reasons for findings

Issue no.3.

12. On behalf of respondent, it has been argued with vehemence that the petition filed by the petitioner before this Court, is hopelessly time barred because the same was filed after more than nine years. By referring to the statement of Shri Rasveer Singh Negi (RW-2), it was further urged that in the month of June, 2000, the petitioner had not served any demand notice. Only, in the year, 2008, demand notice had been served. Thus, the petitioner had not served any demand notice during the period w.e.f. 2000 to 2008. It was further urged that from the evidence of Shri Jasveer Singh Negi (RW-2), it stands duly proved that the claim of the petitioner is barred by limitation.

13. On the other hand, Ld. Counsel for the petitioner urged that from the statement of Shri Sohan Lal Jalota (PW-4), it is abundantly clear that the office of Executive Engineer, IPH Rampur had received demand notice vide dairy no. 95 dated 10.6.2002 and reply thereto had also been filed. Thereafter, the Labour-cum-Conciliation Officer had issued letter to Prem Chand (petitioner). Since, at that time, the petitioner was found to have already filed an OA before Administrative Tribunal, Shimla, the Labour-cum-Conciliation Officer temporarily kept in abeyance the proceedings till further orders and in this regard letter is Ex. PW-4/B. Ld. Counsel further submitted that when it was known by the petitioner that his OA had been dismissed, he filed another application to the Labour-cum-Conciliation Officer, Rampur on 16.5.2008, in order to get revived the conciliation proceedings. To that application, the respondent had filed reply, during the course of conciliation proceedings, on 6.6.2008. Thereafter, a report, under section 12 (4) of the Act, had been submitted to the Labour Commissioner, Shimla, vide Ex. PW-4/E. Thus, the Ld. Counsel urged that there had been no delay/laches on the part of the petitioner to pursue his case. Ld. Counsel further urged that even the petitioner when examined himself as PW-5, also stated that when his services had been terminated, he approached the Administrative Tribunal, in the year, 2000 and during the pendency of OA, he had raised demand notice on 30.5.2002 and in consequence thereof, conciliation proceedings were initiated before Labour-cum-Conciliation Officer. As per letter dated 28.8.2002, he (PW-5), had been informed that the conciliation proceedings had been kept in abeyance. From his Advocate, he had known that in the year, 2004, his case/OA had been dismissed by the Administrative Tribunal, the copy of which, he procured in the year, 2008 and thereafter filed application for revival of conciliation proceedings. Ld. Counsel, on the evidence of the petitioner (PW-5), further urged that the same clearly goes to show that there

had been no lapse on the part of the petitioner in order to pursue his case. Thus, it cannot be said that the claim of the petitioner is barred by limitation.

14. From the evidence of PW-4 (labour Inspector, Rampur), it is quite clear that the petitioner, after his retrenchment, had raised demand notice, copy of which is Ex. PW-4/A and in consequence thereof conciliation proceedings had been initiated by Labour-cum-Conciliation Officer, Rampur. Since, during those proceedings, it had been found that the petitioner had also filed OA before Administrative Tribunal against his dismissal/retrenchment, the conciliation proceedings were kept in abeyance and regarding the same the petitioner was informed by letter, copy of which is Ex. PW- 4/B. The evidence of this witness further makes it clear that on 16.5.2008, the petitioner had again submitted an application for getting revived the conciliation proceedings. Undoubtedly, in the evidence of RW-2 (Rasveer Singh Negi), it has come that during the period w.e.f. 2000 to 2008, the petitioner had not raised any demand notice but his such version gets falsified from the evidence of Shri Sohan Lal Jalota (PW-4), posted as Labour Inspector Rampur, who has stated, on the basis of summoned record, brought by him. I may also like to mention that Ex. PW-4/D, is the copy of demand notice dated 16.5.2008. In this demand notice, the petitioner has made it clear that after his termination, he had filed a case before HP Administrative Tribunal and for this reason, he was informed vide letter dated 28.8.2002, by the Labour-cum-Conciliation Officer, Rampur, that conciliation proceedings could not be taken further as the same could not have been processed simultaneously in two separate Courts. It has also been clarified in this notice that regarding the status of his original application, which was dismissed on 6.8.2004, he had come to know in the month of April, 2008, when he visited the registry of the Administrative Tribunal.

15. The evidence, aforesaid, as well as documents, referred to above, clearly go to show that immediately after his dismissal, the petitioner had filed a case, before the Administrative Tribunal and that during the pendency of the same, he had also raised a demand notice before his employer, the copy of which is Ex. PW-4/A, and on its basis, conciliation proceedings had been initiated by the Labour-cum-Conciliation Officer, Rampur. The petitioner had been informed vide letter Ex. PW-4/B, that conciliation proceedings had been kept in abeyance/under-suspension. It has been rightly argued on behalf of the petitioner that there had been no lapse on his part to pursue his case either before Administrative Tribunal or the Labour-cum-Conciliation Officer, Rampur.

16. It has been held by the **Hon'ble Apex Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SC 496** that :

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

17. On the basis of the case law (Supra, it cannot be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

18. From the language of this section, it appears that the Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication. In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

19. In the instant case, the conciliation proceedings which had been suspended/kept in abeyance vide letter dated 28.8.2002, copy of which is Ex. PW-4/B, were requested to be revived by demand notice dated 26.5.2008, copy of which is Ex. PW-4/D. Thereafter, the reference to this Court was made by the appropriate government on 11.8.2009. This goes to show that in the opinion of the Government, an industrial dispute existed on the date, when the reference for adjudication was made.

20. When, the reference came to be made to this Court, by the appropriate government, notices were issued to both the parties and in consequence thereof, the petitioner filed his claim/petition. An objection has been taken by the respondent that his such petition is barred by limitation. I may mention that consequent upon the making of reference, to this Court, by the appropriate government, the petitioner has filed statement of claim. It is not understandable as to how it is barred by limitation. Already, I have stated and observed above that mere delay in challenging the termination would not be a bar to the adjudication of the dispute/matter. Moreover, it has been held by the **Hon'ble Supreme Court, in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-**

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

21. Having regard to the law laid down (supra) and also my discussion, foregoing, I hold that the respondent has failed to prove that this petition is barred by limitation. Thus, my answer to this issue is in "No".

Relief

Resultantly, as per the directions of Hon'ble High court vide order dated 23.6.2014, as referred to above, I decide issue no.3 in negative. This award/order shall form part and parcel of earlier award dated 25.2.2012, passed by this Court. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 23rd day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM LABOUR COURT, SHIMLA

Ref no. 66 of 2009.

Instituted on 17.8.2009.

Re-registered on old no. after remand on 1.7.2014.

Decided on 23.8.2014.

Adha Singh S/o Shri Mungi Ram R/o Village Punan, Sub Tehsil, Nankhari, District Shimla, H.P.

Petitioner.....

V.S.

The Executive Engineer, IPH Division Rampur Bushahr, District Shimla, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate.

For respondents: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of Shri Adha Singh S/o Shri Mungi Ram by the Executive Engineer, IPH Division Rampur Bushahr, District Shimla w.e.f. 29.6.2000 without following the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits including reinstatement and compensation the above workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was engaged as daily waged beldar on 10.10.1996, in IPH Sub-Division, Nankhari, by the respondent. In each calendar year, he had completed 240 days, including twelve calendar months, preceding his termination/retrenchment, which took place on 29.6.2000. It is alleged that his services were terminated without issuing any notice. After his termination, the respondent engaged junior persons namely Prem S/o Shri Sita Ram and some other persons who are still working with the respondent. In this way, provisions of section 25 G & H of the Act, were also violated. It is further averred that since his termination i.e 29.6.2000, he had been making requests, orally as well as in writing, to the respondent for his reinstatement but of no avail. After his termination, he has not been gainfully employed. Against this back-drop, a prayer has been made for his reinstatement along-with all service benefits.

3. The petition has been contested on having raised preliminary objections qua maintainability and limitation. It has been specifically averred that although, the petitioner had been allegedly retrenched in the year, 2000 but he filed his claim, before this Court, after more than nine years. On merits, it has been asserted that the petitioner, who had been engaged as beldar in June, 1996, worked intermittently till June, 2000. He had never worked for 240 days in every calendar year. In the month of June, 2000, he had abandoned his job. It is further averred that in the year,

1998, one Shri Prem Chand S/o Shri Sita Ram was engaged as work inspector whose category is different from the petitioner.

4. Pleadings of the parties gave rise to the following issues, which were struck on 15.6.2010.

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is barred by limitation?

OPR.....

4. Relief.

5. Here, I would like to point-out that vide award dated 25.2.2012, passed by this Court, whereas issue no.1 was decided in "Yes", the petitioner was held entitled for reinstatement with seniority and continuity in service but without back-wages, while deciding issue no.2. The answer to issue no.3 was in "No". Consequent, upon the findings, recorded on the aforesaid issues, the petitioner was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without wages.

6. From the order dated 23.6.2014, passed by the Hon'ble High Court in LPA No. 87 of 2014 along-with LPA's No. 88-89-90-91-95 and 96 of 2014, it appears that the award of this Court dated 25.2.2012, had been challenged/assailed by the State of HP and another by filing six writ petitions being CWP No. 6591/2012, titled as State of Himachal Pradesh & another versus Hardyal Singh, CWP No. 6601/2012, titled as State of Himachal Pradesh & another versus Ram Sen, CWP No. 6602/2012, titled as State of Himachal Pradesh & another versus Sant Ram, 6603/2012, titled as State of Himachal Pradesh & another versus Jawahar Lal, CWP No.6604/2012, titled as State of Himachal Pradesh & another versus Chunni Lal and CWP 6605/2012, titled as State of Himachal Pradesh & another versus Prem Chand, which came to be decided by way of dismissal by common judgment dated 17.6.2013, of the Hon'ble High Court (Writ Court). It is further borne out from the order of the Hon'ble High Court dated 23.6.2014, the Writ Court in CWP No. 6599 of 2012, titled as State of HP and another Vs. Adha Singh, had dismissed the writ petition, filed by State of HP and another, vide judgment and order dated 18.7.2013.

7. Against the judgment and order dated 18.7.2013, made by the Writ Court in CWP No. 6599 of 2012, an appeal was filed which came to be registered as LPA No. 96 of 2014. Since, the facts and circumstances involved in the said case (LPA No. 96 of 2014), were found to be similar to those of other cases/appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), THE Hon'ble High Court deemed it proper to decide appeal (LPA No. 96 of 2014), alongwith other appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), by way of common judgment. The Hon'ble High Court disposed of the writ petitions by remanding the case/references with the direction to this Tribunal to decide issue no.3, within six weeks. It is relevant to reproduce the order of the Hon'ble High Court, as under:

"6. We have gone through the impugned judgment, whereby the Writ Court upheld the awards made by the Industrial Tribunal-cum-Labour Court, Shimla, H.P.,

hereinafter referred to as “the Tribunal”, in Reference No. 80 of 2010, dated 25.02.2010, Reference No. 63 of 2009, dated 25.02.2012, Reference No. 65 of 2009, dated 25.02.2012, Reference No. 67 of 2009, dated 25.02.2012 and Reference No. 62 of 2009, dated 25.02.2012.

7. While examining the awards passed by the Tribunal, one comes to an inescapable conclusion that the Tribunal has not determined Issue No. 3, which reads as under:-

“3. Whether this petition is barred by limitation?

....OPR”

8. After noticing the contentions of the learned Counsel for the parties, we asked the learned Counsel for the respondent(s) to defend the impugned judgment made by the Writ Court as well as the award made by the Tribunal.
9. At this stage, learned Counsel for the parties stated at the Bar that the Tribunal be directed to determine Issue No. 3 within a short period of time and to grant opportunity to the parties for leading evidence. Ordered accordingly.
10. Accordingly, all the appeals are allowed. The impugned judgment is set-aside.
11. The writ petitions are disposed of by remanding the cases/references with the direction to the Tribunal to decide Issue No. 3, within six weeks, as indicated above.
12. Parties to appear before the Tribunal on 1st July, 2014.
13. It is made clear that in case any party feels aggrieved, they are at liberty to question the findings already returned by the Tribunal along-with the findings on Issue No. 3.”

8. As directed by the Hon’ble High Court, this Court is to determine issue no.3, which reads as under:

3. Whether this petition is barred by limitation?

....OPR

4. Relief.

9. Pursuant to the order of Hon’ble High Court, both the parties were afforded opportunities to lead their evidence on issue no.3. Whereas, respondent examined Shri Rasveer Singh Negi (RW-2), in support of issue no.3, the petitioner examined Shri Dila Ram (PW-3), Shri Sohan Lal Jalota (PW-4) and himself (PW-5), in order to rebut the evidence led by the respondent on this issue.

10. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issue no.3 for determination, my findings on this issue are as under.

Issue no.3 No.

Relief. Reference stands answered accordingly.

Reasons for findings***Issue no.3.***

12. On behalf of respondent, it has been argued with vehemence that the petition filed by the petitioner before this Court, is hopelessly time barred because the same was filed after more than nine years. By referring to the statement of Shri Rasveer Singh Negi (RW-2), it was further urged that in the month of June, 2000, the petitioner had not served any demand notice. Only, in the year, 2008, demand notice had been served. Thus, the petitioner had not served any demand notice during the period w.e.f. 2000 to 2008. It was further urged that from the evidence of Shri Jasveer Singh Negi (RW-2), it stands duly proved that the claim of the petitioner is barred by limitation.

13. On the other hand, Ld. Counsel for the petitioner urged that from the statement of Shri Sohan Lal Jalota (PW-4), it is abundantly clear that the office of Executive Engineer, IPH Rampur had received demand notice vide dairy no. 95 dated 10.6.2002 and reply thereto had also been filed. Thereafter, the Labour-cum-Conciliation Officer had issued letter to Prem Chand (petitioner). Since, at that time, the petitioner was found to have already filed an OA before Administrative Tribunal, Shimla, the Labour-cum-Conciliation Officer temporarily kept in abeyance the proceedings till further orders and in this regard letter is Ex. PW-4/B. Ld. Counsel further submitted that when it was known by the petitioner that his OA had been dismissed, he filed another application to the Labour-cum-Conciliation Officer, Rampur on 16.5.2008, in order to get revived the conciliation proceedings. To that application, the respondent had filed reply, during the course of conciliation proceedings, on 6.6.2008. Thereafter, a report, under section 12 (4) of the Act, had been submitted to the Labour Commissioner, Shimla, vide Ex. PW-4/E. Thus, the Ld. Counsel urged that there had been no delay/laches on the part of the petitioner to pursue his case. Ld. Counsel further urged that even the petitioner when examined himself as PW-5, also stated that when his services had been terminated, he approached the Administrative Tribunal, in the year, 2000 and during the pendency of OA, he had raised demand notice on 30.5.2002 and in consequence thereof, conciliation proceedings were initiated before Labour-cum-Conciliation Officer. As per letter dated 28.8.2002, he (PW-5), had been informed that the conciliation proceedings had been kept in abeyance. From his Advocate, he had known that in the year, 2004, his case/OA had been dismissed by the Administrative Tribunal, the copy of which, he procured in the year, 2008 and thereafter filed application for revival of conciliation proceedings. Ld. Counsel, on the evidence of the petitioner (PW-5), further urged that the same clearly goes to show that there had been no lapse on the part of the petitioner in order to pursue his case. Thus, it cannot be said that the claim of the petitioner is barred by limitation.

14. From the evidence of PW-4 (labour Inspector, Rampur), it is quite clear that the petitioner, after his retrenchment, had raised demand notice, copy of which is Ex. PW-4/A and in consequence thereof conciliation proceedings had been initiated by Labour-cum-Conciliation Officer, Rampur. Since, during those proceedings, it had been found that the petitioner had also filed OA before Administrative Tribunal against his dismissal/retrenchment, the conciliation proceedings were kept in abeyance and regarding the same the petitioner was informed by letter, copy of which is Ex. PW- 4/B. The evidence of this witness further makes it clear that on 16.5.2008, the petitioner had again submitted an application for getting revived the conciliation proceedings. Undoubtedly, in the evidence of RW-2 (Rasveer Singh Negi), it has come that during the period w.e.f. 2000 to 2008, the petitioner had not raised any demand notice but his such version gets falsified from the evidence of Shri Sohan Lal Jalota (PW-4), posted as Labour Inspector

Rampur, who has stated, on the basis of summoned record, brought by him. I may also like to mention that Ex. PW-4/D, is the copy of demand notice dated 16.5.2008. In this demand notice, the petitioner has made it clear that after his termination, he had filed a case before HP Administrative Tribunal and for this reason, he was informed vide letter dated 28.8.2002, by the Labour-cum-Conciliation Officer, Rampur, that conciliation proceedings could not be taken further as the same could not have been processed simultaneously in two separate Courts. It has also been clarified in this notice that regarding the status of his original application, which was dismissed on 6.8.2004, he had come to know in the month of April, 2008, when he visited the registry of the Administrative Tribunal.

15. The evidence, aforesaid, as well as documents, referred to above, clearly go to show that immediately after his dismissal, the petitioner had filed a case, before the Administrative Tribunal and that during the pendency of the same, he had also raised a demand notice before his employer, the copy of which is Ex. PW-4/A, and on its basis, conciliation proceedings had been initiated by the Labour-cum-Conciliation Officer, Rampur. The petitioner had been informed vide letter Ex. PW-4/B, that conciliation proceedings had been kept in abeyance/under-suspension. It has been rightly argued on behalf of the petitioner that there had been no lapse on his part to pursue his case either before Administrative Tribunal or the Labour-cum-Conciliation Officer, Rampur.

16. It has been held by the **Hon'ble Apex Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SC 496** that :

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

17. On the basis of the case law (Supra, it cannot be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

18. From the language of this section, it appears that the Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication. In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

19. In the instant case, the conciliation proceedings which had been suspended/kept in abeyance vide letter dated 28.8.2002, copy of which is Ex. PW-4/B, were requested to be revived by demand notice dated 26.5.2008, copy of which is Ex. PW-4/D. Thereafter, the reference to this Court was made by the appropriate government on 11.8.2009. This goes to show that in the opinion

of the Government, an industrial dispute existed on the date, when the reference for adjudication was made.

20. When, the reference came to be made to this Court, by the appropriate government, notices were issued to both the parties and in consequence thereof, the petitioner filed his claim/petition. An objection has been taken by the respondent that his such petition is barred by limitation. I may mention that consequent upon the making of reference, to this Court, by the appropriate government, the petitioner has filed statement of claim. It is not understandable as to how it is barred by limitation. Already, I have stated and observed above that mere delay in challenging the termination would not be a bar to the adjudication of the dispute/matter. Moreover, it has been held by the **Hon'ble Supreme Court, in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

21. Having regard to the law laid down (supra) and also my discussion, foregoing, I hold that the respondent has failed to prove that this petition is barred by limitation. Thus, my answer to this issue is in “No”.

Relief

Resultantly, as per the directions of Hon'ble High court vide order dated 23.6.2014, as referred to above, I decide issue no.3 in negative. This award/order shall form part and parcel of earlier award dated 25.2.2012, passed by this Court. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 23rd day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA

Ref no. 67 of 2009

Instituted on 17.8.2009

Re-registered on old no. after remand on 1.7.2014

Decided on 23.8.2014

Jawhar Lal S/o Shri Banu Ram R/o Village Dena, Sub Tehsil, Nankhari, District Shimla, HP.

Petitioner.....

VS.

The Executive Engineer, IPH Division Rampur Bushahr, District Shimla, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate.

For respondents: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of Shri Jawhar Lal S/o Shri Banu Ram by the Executive Engineer, IPH Division Rampur Bushahr, District Shimla w.e.f. 29.6.2000 without following the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits including reinstatement and compensation the above workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was engaged as daily waged beldar on 10.10.1996, in IPH Sub-Division, Nankhari, by the respondent. In each calendar year, he had completed 240 days, including twelve calendar months, preceding his termination/retrenchment, which took place on 29.6.2000. It is alleged that his services were terminated without issuing any notice. After his termination, the respondent engaged junior persons namely Prem S/o Shri Sita Ram and some other persons who are still working with the respondent. In this way, provisions of section 25 G & H of the Act, were also violated. It is further averred that since his termination i.e 29.6.2000, he had been making requests, orally as well as in writing, to the respondent for his reinstatement but of no avail. After his termination, he has not been gainfully employed. Against this back-drop, a prayer has been made for his reinstatement along-with all service benefits.

3. The petition has been contested on having raised preliminary objections qua maintainability and limitation. It has been specifically averred that although, the petitioner had been allegedly retrenched in the year, 2000 but he filed his claim, before this Court, after more than nine years. On merits, it has been asserted that the petitioner, who had been engaged as beldar in November, 1996, worked intermittently till 2000. He had never worked for 240 days in every calendar year. In the month of June, 2000, he had abandoned his job. It is further averred that in the year, 1998, one Shri Prem Chand S/o Shri Sita Ram was engaged as work inspector whose category is different from the petitioner.

4. Pleadings of the parties gave rise to the following issues, which were struck on 15.6.2010.

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is barred by limitation?

OPR.....

4. Relief.

5. Here, I would like to point-out hat vide award dated 25.2.2012, passed by this Court, whereas issue no.1 was decided in “Yes”, the petitioner was held entitled for reinstatement with seniority and continuity in service but without back-wages, while deciding issue no.2. The answer to issue no.3 was in “No”. Consequent, upon the findings, recorded on the aforesaid issues, the petitioner was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without wages.

6. From the order dated 23.6.2014, passed by the Hon’ble High Court in LPA No. 87 of 2014 along-with LPA’s No. 88-89-90-91-95 and 96 of 2014, it appears that the award of this Court dated 25.2.2012, had been challenged/assailed by the State of HP and another by filing six writ petitions being CWP No. 6591/2012, titled as State of Himachal Pradesh & another versus Hardyal Singh, CWP No. 6601/2012, titled as State of Himachal Pradesh & another versus Ram Sen, CWP No. 6602/2012, titled as State of Himachal Pradesh & another versus Sant Ram, 6603/2012, titled as State of Himachal Pradesh & another versus Jawahar Lal, CWP No.6604/2012, titled as State of Himachal Pradesh & another versus Chunni Lal and CWP 6605/2012, titled as State of Himachal Pradesh & another versus Prem Chand, which came to be decided by way of dismissal by common judgment dated 17.6.2013, of the Hon’ble High Court (Writ Court). It is further borne out from the order of the Hon’ble High Court dated 23.6.2014, the Writ Court in CWP No. 6599 of 2012, titled as State of HP and another Vs. Adha Singh, had dismissed the writ petition, filed by State of HP and another, vide judgment and order dated 18.7.2013.

7. Against the judgment and order dated 18.7.2013, made by the Writ Court in CWP No. 6599 of 2012, an appeal was filed which came to be registered as LPA No. 96 of 2014. Since, the facts and circumstances involved in the said case (LPA No. 96 of 2014), were found to be similar to those of other cases/appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), THE Hon’ble High Court deemed it proper to decide appeal (LPA No. 96 of 2014), alongwith other appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), by way of common judgment. The Hon’ble High Court disposed of the writ petitions by remanding the case/references with the direction to this Tribunal to decide issue no.3, within six weeks. It is relevant to reproduce the order of the Hon’ble High Court, as under:

“6. We have gone through the impugned judgment, whereby the Writ Court upheld the awards made by the Industrial Tribunal-cum-Labour Court, Shimla, H.P., hereinafter referred to as “the Tribunal”, in Reference No. 80 of 2010, dated 25.02.2010, Reference No. 63 of 2009, dated 25.02.2012, Reference No. 65 of 2009, dated 25.02.2012, Reference No. 67 of 2009, dated 25.02.2012 and Reference No. 62 of 2009, dated 25.02.2012.

7. While examining the awards passed by the Tribunal, one comes to an inescapable conclusion that the Tribunal has not determined Issue No. 3, which reads as under:-

“3. Whether this petition is barred by limitation?

....OPR”

8. After noticing the contentions of the learned Counsel for the parties, we asked the learned Counsel for the respondent(s) to defend the impugned judgment made by the Writ Court as well as the award made by the Tribunal.
9. At this stage, learned Counsel for the parties stated at the Bar that the Tribunal be directed to determine Issue No. 3 within a short period of time and to grant opportunity to the parties for leading evidence. Ordered accordingly.
10. Accordingly, all the appeals are allowed. The impugned judgment is set-aside.
11. The writ petitions are disposed of by remanding the cases/references with the direction to the Tribunal to decide Issue No. 3, within six weeks, as indicated above.
12. Parties to appear before the Tribunal on 1st July, 2014.
13. It is made clear that in case any party feels aggrieved, they are at liberty to question the findings already returned by the Tribunal along-with the findings on Issue No. 3.”

8. As directed by the Hon’ble High Court, this Court is to determine issue no.3, which reads as under:

3. Whether this petition is barred by limitation?

....OPR

4. Relief.

9. Pursuant to the order of Hon’ble High Court, both the parties were afforded opportunities to lead their evidence on issue no.3. Whereas, respondent examined Shri Rasveer Singh Negi (RW-2), in support of issue no.3, the petitioner examined Shri Dila Ram (PW-3), Shri Sohan Lal Jalota (PW-4) and himself (PW-5), in order to rebut the evidence led by the respondent on this issue.

10. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issue no.3 for determination, my findings on this issue are as under.

Issue no.3 No.

Relief. Reference stands answered accordingly.

Reasons for findings

Issue no.3.

12. On behalf of respondent, it has been argued with vehemence that the petition filed by the petitioner before this Court, is hopelessly time barred because the same was filed after more than nine years. By referring to the statement of Shri Rasveer Singh Negi (RW- 2), it was further urged that in the month of June, 2000, the petitioner had not served any demand notice. Only, in the

year, 2008, demand notice had been served. Thus, the petitioner had not served any demand notice during the period w.e.f. 2000 to 2008. It was further urged that from the evidence of Shri Jasveer Singh Negi (RW-2), it stands duly proved that the claim of the petitioner is barred by limitation.

13. On the other hand, Ld. Counsel for the petitioner urged that from the statement of Shri Sohan Lal Jalota (PW-4), it is abundantly clear that the office of Executive Engineer, IPH Rampur had received demand notice vide dairy no. 95 dated 10.6.2002 and reply thereto had also been filed. Thereafter, the Labour-cum-Conciliation Officer had issued letter to Prem Chand (petitioner). Since, at that time, the petitioner was found to have already filed an OA before Administrative Tribunal, Shimla, the Labour-cum-Conciliation Officer temporarily kept in abeyance the proceedings till further orders and in this regard letter is Ex. PW-4/B. Ld. Counsel further submitted that when it was known by the petitioner that his OA had been dismissed, he filed another application to the Labour-cum-Conciliation Officer, Rampur on 16.5.2008, in order to get revived the conciliation proceedings. To that application, the respondent had filed reply, during the course of conciliation proceedings, on 6.6.2008. Thereafter, a report, under section 12 (4) of the Act, had been submitted to the Labour Commissioner, Shimla, vide Ex. PW-4/E. Thus, the Ld. Counsel urged that there had been no delay/latches on the part of the petitioner to pursue his case. Ld. Counsel further urged that even the petitioner when examined himself as PW-5, also stated that when his services had been terminated, he approached the Administrative Tribunal, in the year, 2000 and during the pendency of OA, he had raised demand notice on 30.5.2002 and in consequence thereof, conciliation proceedings were initiated before Labour-cum-Conciliation Officer. As per letter dated 28.8.2002, he (PW-5), had been informed that the conciliation proceedings had been kept in abeyance. From his Advocate, he had known that in the year, 2004, his case/OA had been dismissed by the Administrative Tribunal, the copy of which, he procured in the year, 2008 and thereafter filed application for revival of conciliation proceedings. Ld. Counsel, on the evidence of the petitioner (PW-5), further urged that the same clearly goes to show that there had been no lapse on the part of the petitioner in order to pursue his case. Thus, it cannot be said that the claim of the petitioner is barred by limitation.

14. From the evidence of PW-4 (labour Inspector, Rampur), it is quite clear that the petitioner, after his retrenchment, had raised demand notice, copy of which is Ex. PW-4/A and in consequence thereof conciliation proceedings had been initiated by Labour-cum-Conciliation Officer, Rampur. Since, during those proceedings, it had been found that the petitioner had also filed OA before Administrative Tribunal against his dismissal/retrenchment, the conciliation proceedings were kept in abeyance and regarding the same the petitioner was informed by letter, copy of which is Ex. PW-4/B. The evidence of this witness further makes it clear that on 16.5.2008, the petitioner had again submitted an application for getting revived the conciliation proceedings. Undoubtedly, in the evidence of RW-2 (Rasveer Singh Negi), it has come that during the period w.e.f. 2000 to 2008, the petitioner had not raised any demand notice but his such version gets falsified from the evidence of Shri Sohan Lal Jalota (PW-4), posted as Labour Inspector Rampur, who has stated, on the basis of summoned record, brought by him. I may also like to mention that Ex. PW-4/D, is the copy of demand notice dated 16.5.2008. In this demand notice, the petitioner has made it clear that after his termination, he had filed a case before HP Administrative Tribunal and for this reason, he was informed vide letter dated 28.8.2002, by the Labour-cum-Conciliation Officer, Rampur, that conciliation proceedings could not be taken further as the same could not have been processed simultaneously in two separate Courts. It has also been clarified in this notice that regarding the status of his original application, which was dismissed on 6.8.2004, he had come to know in the month of April, 2008, when he visited the registry of the Administrative Tribunal.

15. The evidence, aforesaid, as well as documents, referred to above, clearly go to show that immediately after his dismissal, the petitioner had filed a case, before the Administrative Tribunal and that during the pendency of the same, he had also raised a demand notice before his

employer, the copy of which is Ex. PW-4/A, and on its basis, conciliation proceedings had been initiated by the Labour-cum-Conciliation Officer, Rampur. The petitioner had been informed vide letter Ex. PW-4/B, that conciliation proceedings had been kept in abeyance/under-suspension. It has been rightly argued on behalf of the petitioner that there had been no lapse on his part to pursue his case either before Administrative Tribunal or the Labour-cum-Conciliation Officer, Rampur.

16. It has been held by the **Hon'ble Apex Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SC 496** that :

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

17. On the basis of the case law (Supra, it cannot be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

18. From the language of this section, it appears that the Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication. In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

19. In the instant case, the conciliation proceedings which had been suspended/kept in abeyance vide letter dated 28.8.2002, copy of which is Ex. PW-4/B, were requested to be revived by demand notice dated 26.5.2008, copy of which is Ex. PW-4/D. Thereafter, the reference to this Court was made by the appropriate government on 11.8.2009. This goes to show that in the opinion of the Government, an industrial dispute existed on the date, when the reference for adjudication was made.

20. When, the reference came to be made to this Court, by the appropriate government, notices were issued to both the parties and in consequence thereof, the petitioner filed his claim/petition. An objection has been taken by the respondent that his such petition is barred by limitation. I may mention that consequent upon the making of reference, to this Court, by the appropriate government, the petitioner has filed statement of claim. It is not understandable as to how it is barred by limitation. Already, I have stated and observed above that mere delay in challenging the termination would not be a bar to the adjudication of the dispute/matter. Moreover, it has been held by the **Hon'ble Supreme Court, in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

21. Having regard to the law laid down (supra) and also my discussion, foregoing, I hold that the respondent has failed to prove that this petition is barred by limitation. Thus, my answer to this issue is in “No”.

Relief

Resultantly, as per the directions of Hon'ble High court vide order dated 23.6.2014, as referred to above, I decide issue no.3 in negative. This award/order shall form part and parcel of earlier award dated 25.2.2012, passed by this Court. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 23rd day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA

Ref no. 80 of 2010

Instituted on 10.6.2010.

Re-registered on old no. after remand on 1.7.2014.

Decided on 23.8.2014.

Hardayal Singh S/o Shri Makhu Ram R/o Village Banoga, P.O Lalen, Sub Tehsil, Nankhari,
District Shimla, HP.

Petitioner.....

VS.

The Executive Engineer, IPH Division Rampur Bushahr, District Shimla, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhagwan Chand, Advocate.

For respondents: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of Shri Hardayal Singh S/o Shri Makhu Ram by the Executive Engineer, IPH Division Rampur Bushahr, District Shimla w.e.f. year, 2000 without following the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits including seniority and compensation the above workman is entitled to?”

2. In nutshell, the case of the petitioner is that he was engaged as daily waged beldar in the month of April, 1996, in IPH Sub-Division, Nankhari, by the respondent. In each calendar year, he had completed 240 days, including twelve calendar months, preceding his termination/retranchment, which took place on 29.6.2000. It is alleged that his services were terminated without issuing any notice. After his termination, the respondent engaged junior persons namely Prem S/o Shri Sita Ram and some other persons who are still working with the respondent. In this way, provisions of section 25 G & H of the Act, were also violated. It is further averred that since his termination i.e 29.6.2000, he had been making requests, orally as well as in writing, to the respondent for his reinstatement but of no avail. After his termination, he has not been gainfully employed. Against this back-drop, a prayer has been made for his reinstatement along-with all service benefits.

3. The petition has been contested on having raised preliminary objections qua maintainability and limitation. It has been specifically averred that although, the petitioner had been allegedly retrenched in the year, 2000 but he filed his claim, before this Court, after more than thirteen years. On merits, it has been asserted that the petitioner, who had been engaged as beldar in April, 1996, worked intermittently till June, 2000. He had never worked for 240 days in every calendar year. In the month of June, 2000, he had abandoned his job. It is further averred that in the year, 1998, one Shri Prem Chand S/o Shri Sita Ram was engaged as work inspector whose category is different from the petitioner.

4. Pleadings of the parties gave rise to the following issues, which were struck on 15.6.2010.

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is barred by limitation?

OPR.....

4. Relief.

5. Here, I would like to point-out that vide award dated 25.2.2012, passed by this Court, whereas issue no.1 was decided in “Yes”, the petitioner was held entitled for reinstatement with

seniority and continuity in service but without back-wages, while deciding issue no.2. The answer to issue no.3 was in “No”. Consequent, upon the findings, recorded on the aforesaid issues, the petitioner was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without wages.

6. From the order dated 23.6.2014, passed by the Hon’ble High Court in LPA No. 87 of 2014 along-with LPA’s No. 88-89-90-91-95 and 96 of 2014, it appears that the award of this Court dated 25.2.2012, had been challenged/assailed by the State of HP and another by filing six writ petitions being CWP No. 6591/2012, titled as State of Himachal Pradesh & another versus Hardyal Singh, CWP No. 6601/2012, titled as State of Himachal Pradesh & another versus Ram Sen, CWP No. 6602/2012, titled as State of Himachal Pradesh & another versus Sant Ram, 6603/2012, titled as State of Himachal Pradesh & another versus Jawahar Lal, CWP No.6604/2012, titled as State of Himachal Pradesh & another versus Chunni Lal and CWP 6605/2012, titled as State of Himachal Pradesh & another versus Prem Chand, which came to be decided by way of dismissal by common judgment dated 17.6.2013, of the Hon’ble High Court (Writ Court). It is further borne out from the order of the Hon’ble High Court dated 23.6.2014, the Writ Court in CWP No. 6599 of 2012, titled as State of HP and another Vs. Adha Singh, had dismissed the writ petition, filed by State of HP and another, vide judgment and order dated 18.7.2013.

7. Against the judgment and order dated 18.7.2013, made by the Writ Court in CWP No. 6599 of 2012, an appeal was filed which came to be registered as LPA No. 96 of 2014. Since, the facts and circumstances involved in the said case (LPA No. 96 of 2014), were found to be similar to those of other cases/appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), THE Hon’ble High Court deemed it proper to decide appeal (LPA No. 96 of 2014), alongwith other appeals (LPA Nos. 87, 88, 89, 90, 91, 95 and 96 of 2014), by way of common judgment. The Hon’ble High Court disposed of the writ petitions by remanding the case/references with the direction to this Tribunal to decide issue no.3, within six weeks. It is relevant to reproduce the order of the Hon’ble High Court, as under:

“6. We have gone through the impugned judgment, whereby the Writ Court upheld the awards made by the Industrial Tribunal-cum-Labour Court, Shimla, H.P., hereinafter referred to as “the Tribunal”, in Reference No. 80 of 2010, dated 25.02.2010, Reference No. 63 of 2009, dated 25.02.2012, Reference No. 65 of 2009, dated 25.02.2012, Reference No. 67 of 2009, dated 25.02.2012 and Reference No. 62 of 2009, dated 25.02.2012.

7. While examining the awards passed by the Tribunal, one comes to an inescapable conclusion that the Tribunal has not determined Issue No. 3, which reads as under:-

“3. Whether this petition is barred by limitation?

....OPR”

8. After noticing the contentions of the learned Counsel for the parties, we asked the learned Counsel for the respondent(s) to defend the impugned judgment made by the Writ Court as well as the award made by the Tribunal.

9. At this stage, learned Counsel for the parties stated at the Bar that the Tribunal be directed to determine Issue No. 3 within a short period of time and to grant opportunity to the parties for leading evidence. Ordered accordingly.

10. Accordingly, all the appeals are allowed. The impugned judgment is set-aside.

11. The writ petitions are disposed of by remanding the cases/references with the direction to the Tribunal to decide Issue No. 3, within six weeks, as indicated above.

12. Parties to appear before the Tribunal on 1st July, 2014.

13. It is made clear that in case any party feels aggrieved, they are at liberty to question the findings already returned by the Tribunal along-with the findings on Issue No. 3.”

8. As directed by the Hon'ble High Court, this Court is to determine issue no.3, which reads as under:

3. Whether this petition is barred by limitation?

....OPR

4. Relief.

9. Pursuant to the order of Hon'ble High Court, both the parties were afforded opportunities to lead their evidence on issue no.3. Whereas, respondent examined Shri Rasveer Singh Negi (RW-2), in support of issue no.3, the petitioner examined Shri Dila Ram (PW-3), Shri Sohan Lal Jalota (PW-4) and himself (PW-5), in order to rebut the evidence led by the respondent on this issue.

10. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issue no.3 for determination, my findings on this issue are as under.

Issue no.3 No.

Relief. Reference stands answered accordingly.

Reasons for findings

Issue no.3.

12. On behalf of respondent, it has been argued with vehemence that the petition filed by the petitioner before this Court, is hopelessly time barred because the same was filed after more than nine years. By referring to the statement of Shri Rasveer Singh Negi (RW-2), it was further urged that in the month of June, 2000, the petitioner had not served any demand notice. Only, in the year, 2008, demand notice had been served. Thus, the petitioner had not served any demand notice during the period w.e.f. 2000 to 2008. It was further urged that from the evidence of Shri Jasveer Singh Negi (RW-2), it stands duly proved that the claim of the petitioner is barred by limitation.

13. On the other hand, Ld. Counsel for the petitioner urged that from the statement of Shri Sohan Lal Jalota (PW-4), it is abundantly clear that the office of Executive Engineer, IPH Rampur had received demand notice vide dairy no. 95 dated 10.6.2002 and reply thereto had also been filed. Thereafter, the Labour-cum-Conciliation Officer had issued letter to Prem Chand (petitioner).

Since, at that time, the petitioner was found to have already filed an OA before Administrative Tribunal, Shimla, the Labour-cum-Conciliation Officer temporarily kept in abeyance the proceedings till further orders and in this regard letter is Ex. PW-4/B. Ld. Counsel further submitted that when it was known by the petitioner that his OA had been dismissed, he filed another application to the Labour-cum-Conciliation Officer, Rampur on 16.5.2008, in order to get revived the conciliation proceedings. To that application, the respondent had filed reply, during the course of conciliation proceedings, on 6.6.2008. Thereafter, a report, under section 12 (4) of the Act, had been submitted to the Labour Commissioner, Shimla, vide Ex. PW-4/E. Thus, the Ld. Counsel urged that there had been no delay/laches on the part of the petitioner to pursue his case. Ld. Counsel further urged that even the petitioner when examined himself as PW-5, also stated that when his services had been terminated, he approached the Administrative Tribunal, in the year, 2000 and during the pendency of OA, he had raised demand notice on 30.5.2002 and in consequence thereof, conciliation proceedings were initiated before Labour-cum-Conciliation Officer. As per letter dated 28.8.2002, he (PW-5), had been informed that the conciliation proceedings had been kept in abeyance. From his Advocate, he had known that in the year, 2004, his case/OA had been dismissed by the Administrative Tribunal, the copy of which, he procured in the year, 2008 and thereafter filed application for revival of conciliation proceedings. Ld. Counsel, on the evidence of the petitioner (PW-5), further urged that the same clearly goes to show that there had been no lapse on the part of the petitioner in order to pursue his case. Thus, it cannot be said that the claim of the petitioner is barred by limitation.

14. From the evidence of PW-4 (labour Inspector, Rampur), it is quite clear that the petitioner, after his retrenchment, had raised demand notice, copy of which is Ex. PW-4/A and in consequence thereof conciliation proceedings had been initiated by Labour-cum-Conciliation Officer, Rampur. Since, during those proceedings, it had been found that the petitioner had also filed OA before Administrative Tribunal against his dismissal/retrenchment, the conciliation proceedings were kept in abeyance and regarding the same the petitioner was informed by letter, copy of which is Ex. PW- 4/B. The evidence of this witness further makes it clear that on 16.5.2008, the petitioner had again submitted an application for getting revived the conciliation proceedings. Undoubtedly, in the evidence of RW-2 (Rasveer Singh Negi), it has come that during the period w.e.f. 2000 to 2008, the petitioner had not raised any demand notice but his such version gets falsified from the evidence of Shri Sohan Lal Jalota (PW-4), posted as Labour Inspector Rampur, who has stated, on the basis of summoned record, brought by him. I may also like to mention that Ex. PW-4/D, is the copy of demand notice dated 16.5.2008. In this demand notice, the petitioner has made it clear that after his termination, he had filed a case before HP Administrative Tribunal and for this reason, he was informed vide letter dated 28.8.2002, by the Labour-cum-Conciliation Officer, Rampur, that conciliation proceedings could not be taken further as the same could not have been processed simultaneously in two separate Courts. It has also been clarified in this notice that regarding the status of his original application, which was dismissed on 6.8.2004, he had come to know in the month of April, 2008, when he visited the registry of the Administrative Tribunal.

15. The evidence, aforesaid, as well as documents, referred to above, clearly go to show that immediately after his dismissal, the petitioner had filed a case, before the Administrative Tribunal and that during the pendency of the same, he had also raised a demand notice before his employer, the copy of which is Ex. PW-4/A, and on its basis, conciliation proceedings had been initiated by the Labour-cum-Conciliation Officer, Rampur. The petitioner had been informed vide letter Ex. PW-4/B, that conciliation proceedings had been kept in abeyance/under-suspension. It has been rightly argued on behalf of the petitioner that there had been no lapse on his part to pursue his case either before Administrative Tribunal or the Labour-cum-Conciliation Officer, Rampur.

16. It has been held by the **Hon'ble Apex Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SC 496** that :

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

17. On the basis of the case law (Supra, it cannot be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

18. From the language of this section, it appears that the Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication. In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

19. In the instant case, the conciliation proceedings which had been suspended/kept in abeyance vide letter dated 28.8.2002, copy of which is Ex. PW-4/B, were requested to be revived by demand notice dated 26.5.2008, copy of which is Ex. PW-4/D. Thereafter, the reference to this Court was made by the appropriate government on 11.8.2009. This goes to show that in the opinion of the Government, an industrial dispute existed on the date, when the reference for adjudication was made.

20. When, the reference came to be made to this Court, by the appropriate government, notices were issued to both the parties and in consequence thereof, the petitioner filed his claim/petition. An objection has been taken by the respondent that his such petition is barred by limitation. I may mention that consequent upon the making of reference, to this Court, by the appropriate government, the petitioner has filed statement of claim. It is not understandable as to how it is barred by limitation. Already, I have stated and observed above that mere delay in challenging the termination would not be a bar to the adjudication of the dispute/matter. Moreover, it has been held by the **Hon'ble Supreme Court, in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:-**

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

21. Having regard to the law laid down (supra) and also my discussion, foregoing, I hold that the respondent has failed to prove that this petition is barred by limitation. Thus, my answer to this issue is in "No".

Relief

Resultantly, as per the directions of Hon'ble High court vide order dated 23.6.2014, as referred to above, I decide issue no.3 in negative. This award/order shall form part and parcel of earlier award dated 25.2.2012, passed by this Court. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 23rd day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref no. 41 of 2009

Instituted on. 18.5.2009.

Decided on 26.8.2014.

Krishan Lal Sharma S/o Shri Mohan Lal Sharma, R/o Village & Post Office, Jamni, Tehsil Sarkaghat, District Mandi, HP.

.....*Petitioner.*

Vs.

1. Secretary, M/s Bhojia Dental College & Hospital, Budh (Baddi), Tehsil Nalagarh, District Solan, HP.
2. Principal, M/s Bhojia Dental College & Hospital, Budh (Baddi), Tehsil Nalagarh, District Solan, HP.

.....*Respondents*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondents : Shri Ravinder Thakur, Advocate.

AWARD

The reference for, adjudication, is as under;

“Whether termination of Shri Krishan Lal Sharma S/o Shri Mohan Lal Sharma by the (i) Secretary, M/s Bhojia Dental College & Hospital, Budh (Baddi), Tehsil Nalagarh, District Solan, HP w.e.f. 31.10.2006, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the above aggrieved worker is entitled to from the above employer?”

2. Before, I proceed further, I may like to make it clear that in the initial reference, the date of termination of the petitioner was mentioned w.e.f. 31.10.2007, but the same was got corrected as per corrigendum dated 12.3.2010 and thus it was corrected to be 31.10.2006 instead of 31.10.2007.

3. In nutshell, the case of the petitioner is that he was appointed as Dental Chair Technician (hereinafter referred as Technician) on 1.3.2004, at first instance and continued to remain, as such, till his illegal removal from services i.e 31.10.2006. It is alleged that although, he had been given appointment, on contract basis, for a period of one year, at first instance, but the same was likely to continue thereafter, without pre-condition, as the post of Technician was statutory and permanent in nature. Since, he had worked satisfactorily, during the contract period, after the completion of one year, his services were deemed to have been confirmed on the said post, to which his appointment had also been approved by the statutory authorities including Dental Council of India. When, his services were illegally terminated, on 31.10.2006, he was drawing Rs. 4960/- per month despite the fact that initially his appointment was on fixed pay of Rs. 3000+500 (HRA). It is further averred that although, he had applied for the post of Technician on 14.2.2004 and immediately the interview to the said post was held and that on having been selected, he joined the said College, on 1.3.2004 but the respondent management issued him an appointment letter, arbitrarily and contrary to the all fairness of law, on 1.10.2004 i.e after a long gap of eight months, with ulterior motives. In this way, his said appointment had been made applicable, in arbitrarily manner, w.e.f. 1.7.2004, for a period of one year. Apart from this, the Principal of the College was not competent authority to terminate his services for the reason that he was not the appointing authority. In this way, without holding any enquiry and without any reason, his services were terminated. As a matter of fact, the disciplinary authority was required to pass a final order, with full mention of the misconduct, before terminating his services but nothing such was done. Since, he had been completing 240 days in each calendar year including twelve calendar months preceding his termination, the requirements of the mandatory provisions of Industrial disputes Act, 1947 (hereinafter referred as Act), were required to be complied with particularity as contained in sections 25-F, 25-G and H because the respondents also employed a new person after his termination. The punishment which has been inflicted upon him (petitioner) by way of termination falls under the ambit of section 2 (oo) of the Act. Against this back-drop, a prayer has been made for his reinstatement along-with all consequential service benefits including back-wages.

4. The petition has been contested on having raised various preliminary objections qua misjoinder of parties as well as maintainability and estoppel. On merits, it has been asserted that the petitioner had consciously accepted the contractual appointment, on the terms specified therein, while joining on 1.11.2004. In terms of the contract, his appointment was extended from time to time. Firstly, his contract was renewed for six months w.e.f. 1.11.2005 to 30.4.2006 and thereafter by another six months i.e w.e.f. 1.5.2006 to 31.10.2006, when, it was not renewed further. It has been denied that he (petitioner) had been illegally removed from services w.e.f. 31.10.2006. It is further maintained that the alleged removal of the petitioner, from 31.10.2006, was not on account

of any disciplinary proceedings but it was on account of settled terms, in accordance with section 2(oo) (bb) of the Act. Moreover, it was in the knowledge of the petitioner that his appointment had been on contract basis as per specified terms and conditions. Other allegations denied.

5. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondents.

6. On the pleadings of the parties, following issues were struck on 28.6.2011.

1. Whether the termination of services of petitioner w.e.f. 31.10.2006 by the respondent is in violation of the provisions of Industrial Disputes Act, 1947?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP.....

3. Relief.

7. I have heard the Ld Counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant. .

Relief. Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue no.1.

9. The contention, advanced on behalf of the petitioner, is to this effect that his services had been terminated, on 31.10.2006, in violation of the provisions of the Act, particularly, as contained in sections 25-F, 25-G and 25-H. On the other hand, the plea taken by the respondent is that the petitioner had been engaged for a particular period, as per the terms of the contract, and for this reason, if, his contract was not renewed beyond 31.10.2006, the same cannot be termed as his retrenchment in terms of section 2 (oo) of the Act.

10. Petitioner while appearing in the witness box as PW-1, has supported his case, as stated in the petition, on all counts, including that on 1.2.2004, he had applied for the post of Technician and joined as such on 1.3.2004. However, he was given appointment order on 1.4.2004 vide Ex. RP-2. As per this letter, he had been given appointment, on contract basis, for one year. On 31.10.2006, his services were terminated and during the period, since his initial appointment till his termination, his contract terms were not confirmed despite the fact that he had continued to work as permanent employee. At the time of his termination, letter Ex. P-3, had been given and at that time, he had not been given any compensation except salary, for the month of October, through cheque. Since, he was the President of the Union, for this reason, he was terminated. After his termination, a person was employed/engaged on the chair of Technician. In the cross-examination, he stated that Ex. P-1, is in his hand and except this biodata, he had not submitted any other bio-

data. He had given the joining report, the photocopy of which is Ex. R-1. Self-stated that this joining report had been got obtained from him, second time by the respondent. He admitted that his appointment had been made for one year but denied that after the completion of said period, it was extended for six months. In his bio-data Ex. P-1, his address has been mentioned correctly. He does not know that whenever, his appointment was extended, he had been issued letters on the addresses filed by him in Ex. P-1. He further denied that again, his appointment was extended by six months and that on 31.10.2006, the extended period of the contract stood completed. He denied that the letter of termination, which had been sent to him by post, he had refused to accept and that on 10.11.2006, by visiting the College, he had taken the cheque in respect of the salary. Self-stated that he had been called at Baddi where he was given salary cheque. He denied that on 10.11.2006, he had been paid Rs. 39,744/-, vide Ex. R-2.

11. According to Shri Suresh Sharma (RW-1), Ex. RA is form-9 pertaining to Krishan Lal, who had joined his duties, in the College, on 1.11.2004 and left the same on 31.10.2006. He further stated that the PF account of the petitioner is having no. HP-1596/167 and as per it, his date of joining is mentioned to be 1.11.2004 and leaving of service 31.10.2006.

12. Shri Vikram Bhojia (RW-2), in his affidavit Ex. RB, has supported the defence version as stated in the reply on all material counts. According to him, the copies of attendance register are Ex. RB-1 and Ex. RB-2. Ex. RB-3, is the appointment letter and Ex. RB-4, joining letter of the petitioner. The bio-data of the petitioner is Ex. RB-5. Ex. RB-6, is the renewal of appointment and Ex. B-7, is the office order dated 1.5.2006. Notice dated 31.10.2006, is Ex. RB-8 (objected to). In the cross-examination, he admitted that in the appointment letter there is overwriting in the date. Self-stated that, such overwriting, is only a correction. He denied that this date is 1.3.2004. He admitted that the petitioner had joined on 1.7.2004. Self-stated that it was his training period. He admitted that in the appointment letter, It has not been mentioned that from 1.7.2004 to 1.11.2004, the petitioner was on training. He denied that there is an overwriting in the date in Ex. RB-5. He further denied that the petitioner had continued to work w.e.f. 1.3.2004 to 31.10.2006, continuously.

13. According to Prabhu Dutt (RW-3), his affidavit is Ex. RC, which he has produced in evidence. In the affidavit, it has been stated by him that on the instructions of Secretary of M/s Bhojia Dental College, a sum of Rs. 39,744/- had been paid to Krishan Lal, on 11.7.2006, at College campus, as eight months' salary, on the completion of his contract period.

14. When, regard is given to the evidence of the petitioner (PW-1), it is abundantly clear that even he admits that his initial appointment was on contract basis for a period of one year. Here, I may like to point-out that consequent upon the application of the petitioner Ex. P-1, he had been given appointment as Chair Technician, on contract basis, as per letter Ex. P-2. Although, it has been urged on behalf of the petitioner that in this letter there is overwriting in the date but I may mention that the contents of this letter are relevant and not its date. From this letter, it is abundantly clear that the petitioner had been offered the post of Technician in the College w.e.f. 1.7.2004, on contract basis, for a period of one year, on fixed pay of Rs. 3000+500 (HRA) per month, as per the terms and conditions which have been mentioned in this letter (Ex. P-2). This clearly goes to show that when the petitioner had joined as Technician, in the College, it had been brought to his notice that his appointment, as such was on contract basis for a period of one year. Shri Vikram Bhojia (RW-2), in his affidavit Ex. RB, has also supported this fact that the appointment of the petitioner was on contract basis. In his evidence, it has also come that Ex. RB-4, is the joining report of the petitioner to the post of Dental Chair Technician. The perusal of this letter goes to show that the petitioner had joined the respondent on 1.10.2004, afternoon. The evidence of this witness further goes to show that the appointment of the petitioner had been renewed vide letter Ex. RB-6. The perusal of this letter shows that the contract of the petitioner which had ended on 31.10.2005, was

renewed, upto 30.4.2006, on the same terms and conditions except clause-10, which stood deleted. As per letter Ex. RB-7, the contract of appointment of the petitioner had further been extended from 1.5.2006, for a period of six months. This letter goes to show that on 30.4.2006, the contract of appointment had come to an end. As per letter Ex. RB-8, dated 31.10.2006, the petitioner had been informed that his contract of appointment had come to an end w.e.f. 31.10.2006 and that it was not being renewed beyond 31.10.2006.

15. The documents, which have been referred to above, clearly go to show that the appointment of the petitioner was on contract basis as per the terms and conditions, as mentioned in his appointment letter Ex. P-2. Since, the contract of the appointment had been extended twice beyond the initial contract of one year, which had come to an end on 31.10.2005, vide Ex. RB-3 (contract renewed from 31.10.2005 to 3.4.2006), and Ex. RB-7 (the contract renewed for six months from 1.5.2006 to 31.10.2006), the contention of the petitioner that he had been confirmed against the post or became a permanent employee does not hold good. The documents, referred to above, make it clear that he had been kept in the employment only on contract basis and not on permanent. In these circumstances, it cannot be said that his services had come to be retrenched within the meaning of section 2(oo) of the Act on 31.10.2006, when his contract was not renewed further. Here, I would like to refer to section 2(bb) of the Act, which reads as under:

“retrenchment” means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –

(bb) **termination of the services of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein”.**

16. Since, the contract of appointment of the petitioner had not been extended beyond 31.10.2006, his termination falls within the ambit of section 2 (oo)(bb) of the Act and not under 2 (oo) of the Act. When, such is the position, the contention of the petitioner that there had been violation of the provisions of sections 25-F, 25-G & H of the Act, does not hold good.

17. Consequently, for what has been stated and observed above, I hold that the alleged termination of the services of the petitioner w.e.f. 31.10.2006, by the respondent is not in violation of the provisions of the Act and my answer to this issue is in “no”.

Issue no.2.

18. For the failure of the petitioner to have proved issue no.1, this issue becomes redundant.

Relief

As a sequel to findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed and as such he is not entitled to any service benefits. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th day of August, 2014.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM LABOUR COURT, SHIMLA CAMP AT NALAGARH

Reference no. 05 of 2011.

Instituted on 1.4.2011.

Decided on 26.8.2014.

Lachman Chand S/o Shri Mast Ram R/o Village Malan, P.O Thana, Tehsil Nalagarh,
District Solan, HP.

Petitioner.....

VS.

M/s VVF Ltd., Vilalge Bhatolikalan, Tehsil Baddi, District Solan, HP.

Respondent.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.

For respondent: Shri Rajeev Sharma, Advocate.

AWARD

The reference, for adjudication, is as under:

“Whether termination of the services of Shri Lachman Chand S/o Shri Mast Ram by the Management of M/s VVF Ltd., Village Bhatolikalan, Tehsil Baddi, District Solan w.e.f. 29.7.2009, without serving any chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. In nutshell the case of the petitioner is that he was permanent employee, working as senior fitter with the respondent, since 3.9.2008. However, vide order dated 29.7.2009, his services were dismissed in an illegal and wrong manner. The charges levelled against him were that he used to remain absent from duties. However, in the month of June, 2009, he could not attend his duties, for some time, due to fatal accident of his son and for this reason, he remained busy. In this regard, he had informed the respondent management and he was also sanctioned leave. Thereafter, the petitioner himself fell ill and this fact was also brought to the notice of the management. On 10.7.2009, on joining of his duties, he had submitted all the medical records and bills to the management. For a period of about one month, the management kept on postponing his resumption of duties. Later on, he (petitioner) had approached Shri Satya Dev, who got signed certain blank papers from him (petitioner) with the assurance that he would be taken back to his duties. It is alleged that the management had cleverly used the aforesaid blank papers in order to cause him wrongful loss. Since, the management had failed to conduct proper enquiry and also to serve him notice, prior to his termination, the same is liable to be set aside.

2. The petition has been contested by the respondent on having raised various preliminary objections including maintainability and that he had not come before this Court with clean hands. On merits, it has been stated that the petitioner who was on probation had joined with the respondent w.e.f. 3.9.2008, and was in the habit of remaining absent from duties without any sanctioned leave. He had only worked for 167.5 days. Since, he had not worked for more than 240 days, he was not entitled to have taken the benefit of section 25-F of the Act. Even, as per letter of appointment dated 3.9.2008, which was duly signed by the petitioner in token of its acceptance, it was made known to him that he was on probation and that his services were to be confirmed by the respondent management after the satisfactory completion of his probation period. It is further averred that no confirmation letter had been issued to the petitioner. Since, the work of the petitioner was not satisfactory, he had been warned, orally, many times and also in writing to improve his behavior and work but of no avail. Since, he was also in the habit of remaining absent, the management had passed his termination order on 29.7.2009 by paying full & final dues in the sum of Rs. 5709/- vide cheque no. 063828 dated 29.7.2009. Other allegations denied.

3. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

4. Pleadings of the parties gave rise to the following issues, which were struck on 3.7.2013.

1. Whether the termination of the services of petitioner w.e.f. 29.7.2009, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is not maintainable as alleged?

OPR.....

4. Relief.

5. Before, I proceed further, I may mention that although the petitioner had been given sufficient opportunities to lead evidence but he failed to do so. On 26.8.2014, when the case was fixed for his evidence, as last opportunity, neither he appeared nor his counsel. Since, this legal aspect was taken note, by this Court, that a reference, which has been made, cannot be dismissed in default, it (Labour Court) decided to answer the reference on the basis of material, whichever, is available on file.

6. Heard. Material perused.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on these issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Relief. Reference answered against the petitioner per operative part of award.

*Reasons for findings**Issue no.1 & 2.*

8. Being interlinked, both these issues are taken up together for discussion and decision.

9. The contention of the petitioner is that his services had been terminated w.e.f. 29.7.2009, without chargesheet and holding enquiry and also in violation of the provisions of the Act. I may mention that in support of his such allegations, the petitioner has neither examined himself nor any other witnesses. On the contrary, the defence version is to this effect that the petitioner, as per appointment letter dated 3.9.2008, was on probation and he was in the habit of remaining absent without getting leave sanctioned. His behavior was also not upto the mark and that he did not make any improvement in his work or behavior despite having been warned so many times, orally and also in writing. Since, he had also not completed 240 days in a calendar year preceding his termination, there was no need to have complied with the provisions of section 25-F of the Act. In these circumstances, the services of the petitioner had been terminated vide order dated 29.7.2009 and he was also paid full & final financial dues as per cheque dated 29.7.2009, in the sum of Rs. 5709. The contention of the petitioner is that the respondent was required to serve a chargesheet upon him and also to hold domestic enquiry before terminating his services but in support of such plea, there is no evidence.

10. For the failure of the petitioner to have examined himself or to lead other evidence, documentary as well as oral, I have no hesitation in holding that he has failed to prove that his termination w.e.f. 29.7.2009, had been in violation of the principles of natural justice or against the provisions of the Act. Thus, my answer to issue no.1 is in "no". **For my findings on issue no.1, in negative, issue no.2, becomes redundant and decided as such.**

Issue no.3

11. An objection has been taken by the respondent that his petition is not maintainable. I may mention that consequent upon the making of reference to his Court, by the appropriate government, the petitioner has filed his claim petition. It is not understandable as to why his such claim petition is not maintainable. Moreover, at the time of arguments, Ld. Counsel for the respondent could not explain as to how this petition is not maintainable. By holding it to be maintainable, my answer to this issue is in "no".

Relief

As a sequel to my findings on the aforesaid issues, the claim filed by the petitioner fails and is hereby dismissed with the result, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 26th day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.
Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM LABOUR COURT, SHIMLA, (H.P)

Ref no. 54 of 2010

Instituted on. 1.5.2010.

Reregistered at old number on 29.8.2014.

Decided on 29.8.2014.

Ram Krishan S/o Shri Punnu Ram R/o Village & P.O Shamathla, Tehsil Kumarsain,
District Shimla, H.P

.....Petitioner.

Vs.

1. The Principal Secretary (MPP & Power), to the Government of Himachal Pradesh, Shimla-2. **(deleted vide order dated 29.8.2014)**
2. The Chief Executive Officer, HIMURJA, Kasumpti Shimla-9.
3. The Director, HIMURJA, SDA Complex, Shimla-9.

.....Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Advocate

For respondents No. 2 & 3.: S/ Shri Vijay Arora and Vimal Kishore Advocates.

AWARD

At the very out-set, I would like to point-out that ex-parte award, passed by this Court, dated 22.11.2012, in reference no. 54 of 2010, was set aside by this Court, as per order passed in application no. 9 of 2013 titled as Ram Krishan Vs. The Principal Secretary (MPP & Power) to the government of HP and others. It is further to be clarified that in view of the statement of Shri J.R Sharma, Advocate for the petitioner, the name of respondent no.1 (The Principal Secretary (MPP & Power) to the government of HP) was ordered to be deleted.

2. The reference for adjudication, is as under;

“Whether the termination of services of Shri Ram Krishan S/o Shri Punnu Ram by the Director, HIMURJA SDA Complex, Shimla-9 w.e.f. 1.1.2008 through verbal orders without following the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not what relief of service benefits including seniority and compensation the workman is entitled to?”

3. In nutshell, the case of the petitioner is that he was engaged as Driver on daily wages by respondent no.1 and worked as such till 31.7.2007, when his services were orally terminated illegally, in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as

Act). It has been stated that in each calendar year prior to his termination, he had been working for 240 days. Against this back-drop, a prayer has been made for his reinstatement along-with all the consequential service benefits including backwages.

4. By filing reply, respondent no.3, averred that the services of the petitioner, as daily waged driver, were on co-terminus basis despite the fact that he had been engaged by the office of Hon'ble MPP & Power Minister and that the wages to him were paid by the Project Officer, HIMURJA. In fact, the services of the petitioner were only required during the period when the same were required by the Hon'ble Minister. Since, on 30.12.2007, the Hon'ble Minister ceased to be the incharge of the Power Ministry, the services of the petitioner were not required and thus, he was duly relieved. It is further averred that the sanctioned posts of eight drivers stood already filled up and for this reason, the petitioner could not be reengaged.

5. Consequent upon the setting aside ex-parte award dated 20.11.2012, by this Court, as per its order passed in application no. 9 of 2013, this case was taken up for further proceedings in accordance with law. When, the file of the case was requisitioned from the record room and it was ordered to be registered at its old number.

6. Since, after the setting aside of exparte award dated 22.11.2012, no evidence was led on behalf of the contesting respondents, the evidence which was led by the petitioner, along-with other material on record has to be considered by this Court.

7. Besides having heard the Ld. Counsel for the parties, I have also gone through the material on record.

8. Ex. PX, is the mandays chart of the petitioner from the year, 2003 to Jan., 2007, which has been issued by the Project Officer, HIMURJA. This document goes to show that the petitioner had been engaged by respondent no.3, and that he was not employed by the office of Hon'ble MPP & Power Minister of HP. It has been stated by the petitioner, when appeared in the witness box as PW-1, that he worked from 2003 to 2007 and have completed more than 240 days in each calendar year. His such version gets fortified from Ex. PX, the mandays chart. As per this document, his termination took place on 1.1.2008. Since, he had worked for more than 240 days in the preceding twelve months prior to his termination, respondent no.3, was under legal obligation to have complied with the requirements of section 25-F of the Act. Since, there has been violation of this mandatory provisions (section 25-F), the termination of the petitioner is illegal and liable to be set aside and accordingly it stands set aside.

9. Consequent upon, for what has been stated and observed above, this petition is required to be allowed and accordingly it is allowed in favour of petitioner and against respondent no.3, by holding that the termination of the services of the petitioner w.e.f. 1.1.2008, by respondent no.3, is illegal and the same is set aside.

Relief

As a sequel to my above findings/discussion, the claim of the petitioner is allowed and as such the respondent no.3 is directed to reinstate the petitioner, in service, forthwith with seniority and continuity. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that “full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”. In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages. The

reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 29th day of August, 2014.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA

Ref no. 151 of 2001.

Instituted on 9.8.2001

Re-registered on old no. after remand on 2.6.2014.

Decided on 14.8.2014.

1. Shri Ranjeet Singh S/o Shri Chet Ram R/o Village & P.O Darabala, Tehsil Rajgarh, District Sirmour, HP.
2. Hari Singh S/o Shri Kami Ram R/o Village Nari, P.O Darabala, Tehsil Rajgarh, District Sirmour, HP.
3. Narayan Singh S/o Shri Bhoop Singh R/o Village Jalog, P.O Darabala, Tehsil Rajgarh, District Sirmour, HP.
4. Rama Nand S/o Shri Daya Ram R/o Village & P.O Darabala, Tehsil Rajgarh, District Sirmour, HP.
5. Om Singh S/o Shri Sewa Ram R/o Village Shelech, P.O Katla Bangi, Tehsil Rajgarh, District Sirmour, HP.
6. Rajinder Singh S/o Shri Bhoop Singh R/o Village & P.O Darabala, Tehsil Rajgarh, District Sirmour, HP.
7. Deep Ram S/o Shri Budh Ram R/o Village Dhaila, P.O Shergaon, Tehsil Rajgarh, District Sirmour, HP.
8. Khajan Singh S/o Shri Kalu Ram R/o Village Diber, P.O Deothi Majhgaon, Tehsil Rajgarh, District Siormour, HP.

Petitioners.....

VS.

1. The Executive Engineer, H.P State Electricity Board, Division Rajgarh at Rajgarh, District Sirmour, HP.
2. The Superintending Engineer, H.P State Electricity Board, Circle Nahan at Nahan District Sirmour, HP.
3. H.P State Electricity Board through its Secretary, Kumar House, Shimla, H.P.

Respondents.....

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners: Shri R.K Khidta, Advocate.

For respondents: Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, is as under:

“Whether termination of the services of S/Shri Ranjeet Singh S/o Shri Chet Ram, Shri Hari Singh S/o Shri Kani Ram, Shri Narayan Singh S/o Shri Bhoop Singh, Shri Om Singh S/o Shri Sewa Ram, Shri Ramanand S/o Shri Daya Ram, Shri Rajinder Singh S/o Shri Bhoop Singh, Shri Deep Ram S/o Shri Budh Ram and Shri Khajan Singh S/o Shri Kalu Ram w.e.f. 15.6.1996 after the completion of 240 days of continuous service by the Executive engineer, H.P State Electricity Board, Division Rajgarh, District Sirmour, HP without complying section 25-F/25-N of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of service benefits and amount of compensation the above said eight workmen are entitled to?”

2. In nutshell, the case of the petitioners is that they were engaged by the respondent, as daily waged beldars, on 21.8.1995, and worked as such till 15.6.1996, without any break. It is further stated that in each calendar year, they had completed 240 days. Despite that, w.e.f. 15.6.1996, their services were orally terminated, without assigning any reason. Even, the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act) particularly as contained in section 25-F, 25-H and 25-N, were not complied with. It is further averred that as per the standing orders of the respondents, it was mandatory to give ten days' notice to the workmen even if they (petitioners) had not completed 240 days in a calendar. Thus, they (respondents) also violated their own standing orders. After their termination, the petitioners had been visiting the office of the respondents, from time to time, with the request to re-engage them in the job but of no avail. They (petitioners) also gave in writing for their re-engagement but without any success. On account of assurance, having been given by the respondents, they (petitioners) kept on waiting for more than four years in the hope that they were to be re-engaged but ultimately when the needful was not done, they were forced to submit a demand notice. On account of the adamant attitude of the respondents, no amicable settlement could be arrived at during conciliation proceedings. It is further stated that the respondents also engaged other new persons by not calling the petitioners for re-employment. Against this back-drop, a prayer has been made to set aside their termination order dated 15.6.1996 and to get them reinstated in service w.e.f. 16.6.1996 with all consequential benefits including full back-wages.

3. The petition has been contested on having raised various preliminary objections including maintainability and that the claim of the petitioners is barred by delay and laches and

further that they have been estopped from filing the present petition due to their own acts, conduct etc. On merits, it has been admitted that the petitioners had been engaged as beldars and that they worked till 15.6.1996 but it was denied that they had completed 240 days in every calendar year. As a matter of fact, they, on their own, had left the job. Moreover, the job for which they had been engaged was subsequently completed. It is further averred that they (petitioners) had been asked to join the work where it was available but they refused to join the work at a station which was away from their homes. Thereafter, they (petitioners) had never approached the respondents. Since, the services of the petitioners had not been retrenched, there was no question of having violated the provisions of the Act, as alleged. It is admitted that the petitioners had visited the office of the respondents at Rajgarh and asked to retain them for work available at their home places but at that time, they had refused to move to the place away from their homes. It is further explained that since there was no work available at the place of their homes, they were directed to move to a place where work was available but they out-rightly refused to do so. Other allegations denied.

4. By filing rejoinder, the petitioners have reaffirmed their own allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues, which were struck on 2.1.2002.

5. Whether the termination of services of the petitioners by respondent no.1 w.e.f. 15.6.1996, is violative of sections 25-F/25-N of the Industrial Disputes Act, 1947?

OPP.....

6. Whether the reference is not maintainable?

OPR.....

7. Whether the petition suffers from delay and laches and if so its effect?

OPR.....

8. Whether the petitioners had abandoned the job as alleged?

OPR.....

9. Relief.

6. Here, I would like to mention that vide award dated 12.8.2008 of this Court, the aforesaid issues were decided as under:

Issue No. 1	Partly yes and partly no.
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Issue No. 2	No.
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Issue No. 3	No.
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Issue No. 4	No.
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7. On the strength of the issue wise findings, so arrived at, by this Court, the claim of the petitioners stood partly succeeded and accordingly the petition was allowed partly with the result, petitioners S/Shri Deep Ram (petitioner no.7), Narayan Singh (petitioner no.3), Rama Nand (petitioner no.4), Om Singh, (petitioner no.5) and Khajan Singh (petitioner no.8) were ordered to be reengaged in service forthwith along-with seniority and continuity with back-wages @ 50 %, while the claim of the remaining petitioners S/ Shri Ranjeet Singh (petitioner no.1), Hari Singh (petitioner no.2), and Rajinder Singh (petitioner no.6), stood dismissed as they were held to have not completed 240 working days in a calendar year preceding their termination.

8. From the order dated 30.4.2014, passed by the Hon'ble high Court in LPAs No. 43 & 44 of 2013, it appears that the award of this Court dated 12.8.2008, had been challenged by the respondents (HPSEB and others) in CWP No. 2037 of 2008 titled as HPSEB and another Vs. Narayan Singh and others and that the Writ Court had dismissed the petition of the respondents (HPSEB & another). It is further borne out that even petitioners (Narayan Singh and others), in whose favour this Court had passed award dated 12.8.2008, had also filed writ petition, in the Hon'ble High Court, CWP No. 8705 of 2011, titled as Narayan Singh and others Vs. HPSEB and another and that the same was allowed by the Writ Court. Against the judgments of the Writ Court, passed in the aforesaid CWP Nos. 8705/2011 and 2037 of 2008, the respondents (HPSEB and another) filed LPAs, which came to be registered as LPA No. 43 of 2013 titled as HPSEB & Another (Appellant) Vs. Narayan Singh & others (respondents) and LPA No. 44 of 2013, titled as HPSEB & Another (Appellant) Vs. Narayan Singh & others (respondents).

9. Vide order dated 30.4.2014, passed in the aforesaid LPAs, the Hon'ble High Court set aside the award dated 12.8.2008, passed by this Court in reference no. 151 of 2001 titled as Narayan Singh & others Vs. HPSEB and another and also judgments dated 16.8.2012, passed in CWP No. 8705 of 2011 titled as Narayan Singh & others Vs. HPSEB & another and CWP No. 2037 of 2008 titled as HPSEB & another Vs. Narayan Singh & others and remanded the matter back to this Tribunal/Court for adjudication afresh, in the light of the directions, issued by the Hon'ble Apex Court, in its various decisions. In order to decide the matter afresh in the light of the directions as issued by the Hon'ble High Court in its order dated 30.4.2014, it is expedient to reproduce this order, as under:

“Having heard learned counsel for the parties as also perused the records pertaining to the award passed by the Labour Court, as made available to us in Court, we are of the considered view that the award dated 12th August, 2008, passed in Reference No. 151/2001, by Industrial Tribunal-cum- Labour Court, Shimla, needs to be quashed and set aside.

2. Respondents-claimants herein were engaged as beldars by the Himachal Pradesh State Electricity Board appellants herein. It is not in dispute that they were engaged on 16.8.1995 and served only till 15.06.1996. They sought reference under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), only in the year 2000. Undisputedly, the dispute was referred for adjudication to the Industrial Tribunal on 17.09.2000.

3. Significantly, the Tribunal framed issue No. 3 with regard to the claim being barred on account of delay and laches. This issue, in our considered view, was summarily answered, without even advertng to the fact situation, in favour of the claimants. Whether the claim was stale or not, more so in the backdrop of the fact that claimants had served only for a period of ten months, required consideration in the light of settled principles of law.

4. Recently, the Apex Court, vide judgment, dated 16th August, 2013 in Civil Appeal No. 6795 of 2013, titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota Versus Mohan Lal, after taking into account its earlier decisions in Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another (1999) 6 SCC 82; Jagbir Singh Vs. Haryana State Agriculture Marketing Board (2009) 15 SCC 327; Balbir Singh Vs. Punjab Roadways (2001) 1 SCC 133 and Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh (2013) 5 SCC 136, has held as under:-

“20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act, but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position

laid down by this Court in *Gitam Singh* that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed". In the instant case, we find that Tribunal, without deciding this issue as was required in law, directed reengagement of the claimants, without also going into the question, as to whether they worked for more than 240 days or not. Whether their re-engagement was justified or not, required detailed consideration in accordance with law.

6. Significantly, this aspect of the matter was not taken into account while disposing of the writ petition, filed by the appellant-petitioners-employee.

7. As such, we quash and set aside the award, dated 12th August, 2008, passed by the Industrial Tribunal-cum-Labour Court, Shimla in Reference No.151/2001, titled as *Narayan Singh and others Vs. HPSEB* and another as also judgments, dated 16th August, 2012, passed in CWP No. 8705 of 2011, titled as *Narayan Singh and others Vs. HPSEB* and another and CWP No. 2037 of 2008, titled as *HPSEB and others Vs. Narayan Singh and others*, remanding the matter back to the Tribunal for adjudication afresh in the light of directions issued by the Apex Court in its various decisions.

8. Mr. V.D. Khidta, learned counsel for the respondents-claimants, while contending that claimants are entitled to 50% back wages, has invited our attention to the decision rendered by the Apex Court in (2013) 10 SCC 324, *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others*. We leave all questions open, to be decided by the Tribunal while passing the award."

10. Having regard to the order of the Hon'ble High Court dated 30.4.2014, this Tribunal/Court is required to adjudicate the matter, in controversy between the parties, afresh, including issue no.3, which in the opinion of the Hon'ble High Court was summarily answered by this Court without even adverting to the fact situation, in favour of the claimants and further as to whether the claimants are entitled to 50% back-wages.

11. Besides having heard the Ld. Counsel for the parties, I have also gone through the record of the case carefully.

12. For the reasons to be recorded hereinafter while discussing the issues including issue no.3 for determination, my findings on these issues are as under.

Issue no.1	Decided accordingly in "yes".
Issue no.2	No.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference stands answered accordingly in favour of the petitioners as per operative part of award.

Reasons for findings

Issue no.1.

13. Be it stated at the very out-set that since in the award dated 12.8.2008, passed by this Court, it had been held that petitioners S/Shri Ranjeet Singh (petitioner no.1), Hari Singh (petitioner no.2), and Rajinder Singh (petitioner no.6), had not completed 240 working days and

that the Certified Standing Orders of the HPSEB, for giving ten days' notice to the workman, was not applicable to their case, for this reason, their claim was dismissed by this Court as they had not been found to have been completed 240 working days in the twelve calendar months preceding their termination. Since, from the records, available before this Court, it appears that they had not challenged the award dated 12.8.2008, which had dismissed their claim for reengagement, by filing writ petition in the Hon'ble High Court, the same can be said to have become final against them. Thus, as per order dated 30.4.2014, of the Hon'ble High Court passed in LPA Nos. 43 & 44 of 2013, as aforesaid, this Tribunal/Court is required to ascertain as to whether the petitioners whose claim had been allowed by this Court as per award dated 12.8.2008, had worked for more than 240 days or not. This observation has been contained in para no.5 of the order of the Hon'ble High Court dated 30.4.2014.

14. Ld. Counsel for the petitioners urged with vehemence that from the oral as well as documentary evidence, on record, it stands duly proved that petitioners S/Shri Deep Ram (petitioner no.7), Narayan Singh (petitioner no.3), Rama (petitioner no.4), Om Singh, (petitioner no.5) and Khajan Singh (petitioner no.8), had completed 240 days in the calendar year preceding their termination. Since, their services had been disengaged/retrrenched without having complied with the provisions of section 25-F of the Act, the same was violative of the provisions of the Act and for this reason, they all deserve to be reinstated with all the consequential benefits.

15. On the other hand, it has been submitted on behalf of the respondents that if this Court holds that the petitioners, aforesaid, had completed 240 working days in a calendar year preceding their termination/disengagement, even then, their reengagement cannot be held to be automatic. This Court is required to look into the legal aspects of the case as to whether the petitioners, aforesaid, could be ordered to be reengaged or they deserve to be awarded compensation in lieu of their reengagement. Ld. Counsel further urged that the petitioners, aforesaid, can also not be awarded back-wages as their claim suffers from delay and latches.

16. Petitioner no.7 Shri Deep Ram, when appeared in the witness box as PW-1, stated that he, as well as other petitioners had joined the respondents, as daily waged beldars, on 21.8.1995 in Chandol section of electric Sub Division Rajgarh and that worked as such upto 15.6.1996, when their services had been retrrenched with the assurance that they would be reengaged as and when work was to be available. During aforesaid period, he along-with others, had completed 240 days. Ex. PW-1/ K, is the copy of the details of his mandays. While retrrenching their services, neither any notice had been issued nor they were paid retrrenchment compensation. Persons junior to them were retained by the respondents and that they are still working. In the cross-examination, he denied that his services had not been dispensed with but instead he was asked to report for work at some other place which he refused and then abandoned the job. He denied that since he was employed, for this reason, did not approach the authorities for reengagement at any point of time after 1996.

17. Petitioner no.5, Shri Om Singh when appeared into the witness box as PW-2 has supported his version as stated in the petition including that Ex. PW-2/A is the copy of details of his mandays as per which he completed 240 days during the period, prior to his disengagement i.e 21.8.1995 to 15.6.1996. Petitioner no.8, Shri Ranjeet Singh (PW-3) also states in similar terms. According to him, Ex. PW-3/A is the copy of the details of his mandays. Petitioner no.4, Shri Ramanand (PW-5), has filed his affidavit Ex. PW-5/A, in which, he supported his case on all material particulars including to have completed 240 days in a calendar year before this oral termination. Petitioner no.3 Shri Narayan Singh (PW-6), has also tendered his affidavit Ex. PW-6/A, wherein he supported his case on all material counts.

18. According to Shri D.K Sood (RW-1), the petitioners had not completed 240 days during calendar year. Firstly, they had been working at Rajgarh and that on the completion of the work there, they were transferred to some other Sub Division under Electric Division, Rajgarh but they refused to join by insisting that they should be provided work in the same Sub Division at Rajgarh because other Sub Divisions were away from their home places. He further stated that petitioner Deep Ram had worked with the respondent department as per Ex. RW-1/A, Narayan Singh as per Ex. RW-1/B, Ramanand as per Ex. RW-1/C, Om Singh as per Ex. RW-1/D, Hari Singh as per Ex. RW-1/E, Ranjeet Singh as per Ex. RW-1/F, Khajan Singh as per Ex. RW-1/G and Rajinder singh as per Ex. RW-1/H. In the cross-examination, he admitted not to have checked the muster rolls showing the working days of the petitioners. He further admitted that he did not prepare the mandays of the petitioners.

19. When the detail of working days relied upon by the respondents in respect of petitioner Deep Ram (Ex. RW-1/A), Narayan Singh (Ex. RW-1/B), Ramanand (Ex. RW-1/C), Om Singh (Ex. RW-1/D) and Khajan Singh (Ex. RW-1/G), are considered, it is revealed that they all had worked for 256 days w.e.f. 16.8.1995 to 15.6.1996. This goes to show that as per the documents relied upon by the respondents, the aforesaid petitioners had completed 240 working days in a calendar year preceding their alleged termination. Although, the plea taken by the respondents is to this effect that the petitioners had abandoned their job because they did not chose to work at places away from their homes but in this regard there is no documentary evidence. In case, the petitioners had been asked to work at other places from the place where they had been initially asked to work, then in this regard there could have been some specific orders. Moreover, if the petitioners had abandoned their jobs, it was required of the respondents to have issued them notices to join the work. Since, there is no such evidence, brought on record, by the respondents, their plea that the petitioners, aforesaid, had abandoned their jobs is not proved.

20. From the documentary as well as oral evidence, as referred to above, it stands duly proved that before their retrenchment, the petitioners had completed 240 working days in a calendar year preceding their termination. When, such was the position, the respondents were required to have complied with the provisions of section 25-F of the Act. To comply with such provision, they (respondents) were required to issue one month's notice, in writing, to the petitioners, aforesaid, or in lieu of such notice to have paid the wages for the period of the notice. Apart from this, they were also required to pay the retrenchment compensation to the petitioners. For the failure of the respondents to have complied with the provisions of section 25-F, the disengagement/retrenchment of the aforesaid petitioners is illegal and unjustified and the same deserves to be set aside.

21. Ld. Counsel for the respondents has urged that since, there had been delay & latches on the part of the petitioners and further that having regard to the period for which they had worked, the petitioners, aforesaid, cannot be ordered to be reinstated with back-wages. According to Ld. Counsel, the petitioners, aforesaid, can be awarded compensation in lieu of the reinstatement. Since, a specific issue has been framed by this Court which is issue no.3 regarding as to whether this petition suffers from delay and latches, I am of the view that the relief which can be granted to the aforesaid petitioners can be ascertained only after giving findings on issue no.3.

22. Consequently, for what has been stated and observed above, my answer to issue no.1 is in "yes accordingly".

23. Before, I proceed to decide issue no.2, it is desirable and expedient to decide issue no.3.

Issue no.3.

23. In para no.3 of its order dated 30.4.2014, it has been observed by the Hon'ble High court that issue no.3, had been decided by this Court, as per its award dated 12.8.2008, summarily without even advertting to the fact situation, in favour of the claimants. Hon'ble High Court also observed that this Court was required to ascertain as to whether the claim of the petitioners was stale or not more so in the back-drop of the fact that claimants had served only for a period of ten months. Further, this aspect of the case was required to be considered in the light of settled principles of law as per their mention given in para no.4 of the order. Keeping in mind the observations of the Hon'ble High Court, I proceed to decide this issue no.3.

24. An objection has been taken by the respondents (preliminary objection no.3) that the relief, as claimed by the petitioners, is barred by delay and latches and for this reason cannot be entertained at this belated stage. The onus to prove this issue lies upon the respondents. However, when regard is given to the evidence of Shri D.K Sood (RW-1), it is revealed that he has not specifically stated that the claim of the petitioners is bared by delay and latches. According to him, the petitioners had never approached the department for their reengagement. He further stated that, on their own, they had left the job and their services were never retrenched. His evidence is further to this effect that on the completion of work at Rajgarh, they (petitioners) had been transferred to some other Sub Division under Electric Division Rajgarh but they refused to join there. In the crossexamination, he expressed his inability to state that as per his personal knowledge, the petitioners had visited the office of the respondents and also gave in writing for their reengagement. He could not say whether they had given in writing vide Ex. PW-1/A, mark C, mark, D, Ex. PW-2/B, mark F, Ex. PW-3/B, mark G and mark H. The evidence of Shri D.K Sood (RW-1), does not go to rule out that the petitioners had visited the office of the respondents, at Rajgarh, and that they had also given in writing for their reengagement. In para no.12 of their petition, the petitioners have specifically alleged that they had been visiting the office of the respondents from time to time and had also given in writing for their reengagement. When needful was not done, they (petitioners) even made a representation in writing. In reply to this paragraph no.12, the respondents have asserted that the petitioners had visited their office at Rajgarh. It is further stated that when they had visited their office, they asked the respondents to retain them at their home place station for work by categorically refusing to move out of their home place. Since, there had been no work available at their places of home, they had been directed to move to other places where the work was available but they out-rightly refused to do so. From the reply, which has been filed by the respondents, it is abundantly clear that they admitted that the petitioners had been visiting their office at Rajgarh for their engagement. The contention of the respondents is further to this effect that since no work was available at Rajgarh, the petitioners had been asked to join at other places where the work was available but they refused to do so.

25. As already observed, there is no such document/material, on record, which could go to substantiate such plea of the respondents. Shri Deep Singh (PW-1), has stated that when his services were disengaged, on 15.6.1996, he approached the authorities for reengagement but of no avail. Thereafter, he submitted an application Ex. PW-1/A for his reengagement. To the similar effect is the evidence of other petitioners whose claim is required to be decided by this Court.

26. Thus, from the evidence which has been referred to above, it is highlighted that when the petitioners were disengaged on 15.6.1996, by the respondents, they kept, on visiting their (respondents') office at Rajgarh for their (petitioners) reengagement and ultimately, when they were not provided job/work, they gave in writing for their reengagement in the year, 1999. When, on having been done the aforesaid needful, nothing favourable was done by the respondents, the petitioners submitted demand notice, copies of which are Ex. PW-1/J and mark X- to mark X-7. This clearly goes to show that right from the beginning, the petitioners had been taking necessary

steps for getting themselves reengaged and that when they realized that the respondents were not inclined to reengage them, they served a demand notice and that when the conciliation failed, a reference was caused to be made to this Court by the appropriate government. Thus, it cannot be said that there had been delay and latches, on the part of the petitioners, to have agitated their claim before the appropriate authority. In other words, it can be said that from the date when they (petitioners) were disengaged i.e 15.6.1996, they had been requesting the respondents for their reengagement. When, such is the position, then it is not understandable as to how it is justified on the part of the respondents to allege that the claim of the petitioners is barred by delay and latches. I may reiterate that even in para no.12 of the reply, the respondents have admitted that the petitioners had been visiting their office at Rajgarh.

27. Consequently, for what has been stated and observed above, I disagree with the Ld. Counsel for respondents that there had been delay and latches on the part of the petitioners to have raised their claim before Court of law. Resultantly, by holding that the respondents have failed to prove this issue, my answer to it is in “no”.

Issue no.2

28. The contention of the respondents is that this reference is not legally maintainable. From the reply, which has been filed by the respondents, it appears that according to them, since, the petitioners had left the job, on their own, for this reason, the reference, which has been made to this Court, is not legally maintainable. Here, I would like to point-out that, as already stated, above, while deciding issue no.1, there is no reliable evidence, whatsoever, led by the respondents that the petitioners had left the job, on their own. Moreover, if the respondents, in any way had felt aggrieved by the maintainability of the reference, before this Court, they could have challenged the same before the Hon’ble High Court by filing writ petition. Apart from this, while deciding issue no.3, I have already held that the claim of the petitioners does not suffer from delay and latches. Here, I would like to point-out that Hon’ble Apex Court in *Gurmail Singh Vs. Principal Government College of Education and others*, (2009) 9 SC 496, has held that:

“Mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.”

29. On the basis of the case law (Supra), it can be said that mere delay in challenging the termination cannot operate as a bar to the adjudication of the dispute/matter. Here, I may refer to section 10 of the Act, which reads as under:

“Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

30. From the language of this section, it appears that the Government’s power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the Industrial dispute. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication. In considering the factual position whether the dispute did exist on the date of reference, the Government could take into account

factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period.

31. In the instant case, in the opinion of the appropriate government there existed an industrial dispute when the reference was caused to be made to this Court for adjudication, I may further observe that once a reference is made to a Labour Court/Tribunal, the same is required to be answered by it.

32. For what has been stated and observed above, I hold that this reference cannot be said to be not maintainable. Apart from this, on behalf of the respondents, it could not be shown, to the satisfaction to this Court, as to why the reference which has been made to this Court is not maintainable. Thus, by holding the reference to be maintainable, my answer to this issue is in “no”.

Issue no.4

33. Whereas, the contention of the petitioners is that their services had been retrenched by the respondents on 15.6.1996, the plea taken by the respondents is that, on their own, they (petitioners) had abandoned their jobs. While deciding issue no.1, I have referred to the statement of Shri D.K Sood (RW-1) wherein he has stated that on the completion of the work, at Rajgarh, the petitioners had been transferred to some other sub Division under Electric Division, Rajgarh but they refused to do the work. It has already been observed by me that in support of such version, there is no documentary proof. I may reiterate that if the petitioners had abandoned their job, it was required of the respondents to have issued them notice to join their work/job. Moreover, if the respondents had proposed to transfer the petitioners to some other place, where the work was available, then it was required of them to have issued orders, in this regard, in writing. Since, there is no reliable documentary as well as oral evidence, on record, which could go to show that the petitioners had abandoned the job, on their own, I have been left with no other alternative but to hold that the respondents have failed to prove this issue to which my answer is in “no”.

34. Now, the most pivotal question arises as to what relief the petitioners, aforesaid, can be granted keeping in view the recent judgments rendered by the Hon’ble Apex Court, the mention of which has been made by the Hon’ble High Court in its order dated 30.4.2014.

35. While deciding issue no.1, it has already been held by me that the termination of the services of the petitioners, aforesaid, w.e.f. 15.6.1996, was in violation of the provisions of section 25-F the Act and that for this reason, the same is required to be set aside. Now, the question arises as to whether the petitioners, aforesaid, can be ordered to be reinstated in service forthwith along-with seniority and continuity in service with back wages or not or that in lieu thereof, they require to be awarded compensation.

36. For the respondents, it has been strenuously argued that since there had been delay and latches on the part of the petitioners to have raised their claim and also that they worked for a short period, they deserve to be awarded compensation in lieu of reinstatement. Ld. Counsel in support of such contention has relied upon (2013) 14 SCC 543, Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal in which it was held that “where the respondent workman had worked for only 286 days and took six years to raise industrial dispute, his reinstatement with 30 % back wages was unjustified. The Hon’ble Apex Court has further held that in lieu of reinstatement, the respondent workman be given compensation of ` 1,00,000/-. Reliance was also placed on (2013) 5 SCC 136, Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, wherein it was held by the Hon’ble Apex Court that “the judicial discretion exercised by the Labour Court, directing the reinstatement of the workman with continuity in service and 25 % back wages suffers from serious infirmity. It was

further held that compensation of ` 50,000/- would meet ends of justice. In (2009) 15 SCC 327, Jagbir Singh Vs. Haryana State Agriculture Marketing Board and another, the Hon'ble Apex Court has held that "reinstatement with full back wages in case of illegal retrenchment of daily wagger was not proper. Instead compensation should be awarded.

37. On the other hand, Ld. Counsel for the petitioners, in support of his contention that the petitioners, aforesaid, deserve to be reinstated with all the consequential benefits, has relied upon AIR 1999 SCC 1351, Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another, in which it was held that the provisions of Article 137 do not apply to the proceedings under the Industrial Disputes Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The Hon'ble Apex Court has further held that the plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Reliance was also placed on AIR 2006, SCC 2466, U.P.S.R.T.C Vs. Sarada Prasad Mishra & Anr., wherein it was held by the Hon'ble Apex Court that "ends of justice would be met if workman was allowed back wages to the extent of 50% from the date of award till date he was reinstated in service". In this case, the dispute had been raised by the workman before Labour Forum after delay of seven years from the date of termination. Also relied on (2013) 10 SCC 324, Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others, in which the Hon'ble Apex Court has held that "the normal rule is of reinstatement with continuity of service and back wages in case of wrongful termination. It was further held that where employee shows he was not gainfully employed after termination, burden is on employer to prove employee was gainfully employed and was getting same or substantially similar emoluments". The Hon'ble Punjab & Haryana High Court in 2014 LLR 817, The Deputy Excise and Taxation Commissioner (Sales & Tax), Kaithal & Others Vs. Presiding Officer, Labour Court & another, has held that "if termination of services of the workman is quashed, it would attract reinstatement, back-wages and continuity of service".

38. In the instant case, the petitioners, aforesaid, have been proved to have worked for 256 days before their services were terminated w.e.f. 15.6.1996. Although, the plea taken by the respondents is to this effect that the petitioners, on their own, had left the job but their (respondent's) plea has not been established. On the contrary, it has been clearly proved, on record that after their termination, the petitioners had been visiting the office of the respondents, at Rajgarh for their reinstatement and that when the needful was not done, in the year, 1999, they gave in writing for their reinstatement. Thus, in the instant case, it cannot be said that there had been delay, on the part of the petitioners, to have raised their dispute before the competent authority. It is true that the period of job/work put in by the petitioners, aforesaid, is short i.e only about 256 days but their working period would have been more had their services been not terminated illegally, in violation of the provisions of the Act, on 15.6.1996. When, due to the illegal acts of the respondents, the services of the petitioners, aforesaid, stood retrenched/terminated then, in my view, they cannot be denied reinstatement. I may further observe that there had been no fault on the part of the petitioners as far as their illegal termination/retrenchment is concerned. Further there has been no delay on their part to have raised the dispute. In the rulings, which have been relied upon on behalf of the respondents, there had been delay in raising the disputes and also that the workmen, therein, had worked for a short period. In the instant case, I have already observed that had the services of the petitioners, aforesaid, not retrenched illegally in violation of the provisions of the Act, they would have continued to remain in service for a longer period.

39. In this way, having regard to the case laws (supra), I am of the firm view that the petitioners, aforesaid, deserve to be reinstated in service with seniority and continuity. They (petitioners), also deserve to be granted back-wages @ 50%. Accordingly, I hold so.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioners, aforesaid, is allowed and as such they are ordered to be reinstated in service, forthwith, with seniority and continuity from the date of their illegal retrenchment i.e 15.6.1996, along-with back-wages @ 50%. The reference is answered accordingly. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 14th day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUMLABOUR COURT, SHIMLA

Ref no. 118 of 2010.

Instituted on 27.10.2010.

Decided on 13.8.2014.

Ravinder S/o Shri Keshav Ram R/o VPO Rajhana, Tehsil & District Shimla, HP.

Petitioner.

VS.

The Executive Engineer, HPPWD, Division No. III, Shimla-3.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Advocate.

For respondent: Shri Surender Negi, Dy. DA.

AWARD

The reference for adjudication, is as under:

“Whether action of the Executive Engineer, Shimla, Division No. III, HPPWD, Shimla-3 not to allow Shri Ravinder S/o Shri Keshav Ram to resume his duty w.e.f. 5.7.2007 on production of Medical Fitness Certificate, as alleged by the workman is legal and justified? If not, to what back-wages, service benefits and relief the above named workman is entitled to?”

2. In nutshell, the case of the petitioner is that initially, he had been appointed as beldar, on daily wages, with the respondent w.e.f. 5.6.1992 and that he continued to remain as such till Feb., 2002, when his services were terminated without assigning any reason and also against the settled provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). He had completed 240 days in twelve calendar months preceding the date of his illegal termination. Although, he made several requests for his re-employment, by visiting the office of the respondent, but despite assurance, the needful was not done. On the contrary, the respondent retained his juniors and also made fresh engagements. Since, neither he had been issued any prior notice nor paid retrenchment compensation, his termination is against the provisions of the Act. Against this back-drop, a prayer has been made for his reinstatement along-with all the consequential service benefits including back-wages etc.

3. The petition has been contested on having raised various preliminary objections including maintainability and that it is hit by delay and laches. On merits, it has been asserted that the petitioner was engaged as daily waged beldar w.e.f. 8.6.1992 and he continued to work, as such, till October, 2001. For better gainful engagement, he had abandoned the job, on his own. During the period of employment, he (petitioner) also used to remain absent for a considerable long period. It has been specifically denied that he was engaged w.e.f. 5.6.1992 and continued to remain, as such, till Feb., 2002. It has been denied that the petitioner had completed 240 days in a calendar year preceding his termination. It is further averred that the petitioner had submitted medical certificates, in July, 2007, with the request for their approval. When, those certificates were perused, it appeared that as per the last certificate (1.1.2002 to 5.7.2007), the petitioner had been declared fit for duties w.e.f. 6.7.2007. In order to ascertain the authenticity of the certificates, submitted by the petitioner, the department, had requested Chief Medical Officer, Solan to constitute a Medical Board and forwarded all the medical certificates which had been submitted by the petitioner. In order to appear before the Medical Board, the petitioner had also been requested. The Medical Board, on having considered all the certificates, observed that the petitioner was suffering from Seizure dis-order and off treatment for the past eight years. The last medical certificate (w.e.f. 1.1.2002 to 5.7.2007), as per which the petitioner had been declared fit for duties w.e.f. 6.7.2007, was found to be contradictory to the opinion given by the Medical Board. It is further maintained that the medical certificates which had been submitted by the petitioner were vague and those had been filed just to legalize the period of his absence from office. The petitioner had submitted a medical certificate for the period w.e.f. 16.9.1997 to 19.9.1997, but during that period, he was found to be present as per muster roll no. 288/V. For that period (16.9.1997 to 19.9.1997), he had been advised bed rest by the Doctor. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed and reiterated his own allegations. It has also been submitted that he did not abandon the job. Since, during the course of employment, he had been suffering from some serious disease (seizure disorder), he started to take treatment, regarding the same, w.e.f. 1.1.2001 from Bhalla Clinic, Solan. In this regard, he had also disclosed the respondent department. The treatment, which was started since 1.1.2001, continued till 5.7.2007, when he got recovered. It is further averred that he had submitted the entire records pertaining to his medical treatment, to the office of the respondent department including the fitness certificate, on 5.7.2007. On that date, he had been orally told by the respondent department that his services were no longer required. The medical Board, which had been got constituted from CMO Solan, on 16.2.2012, had observed that the petitioner was suffering from seizure disorder and off treatment for the past eight years.

5. On the pleadings of the parties, following issues were framed on 22.6.2013.

1. Whether the action of respondent not to allow the petitioner to resume his duties w.e.f. 5.7.2007, on production of medical fitness certificate is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

3. Whether this petition is not maintainable as alleged?

OPR.....

4. Relief.

6. I have heard Ld Counsel for the parties and have also gone through the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service w.e.f. 5.7.2007 but without back-wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no.1.

8. At the very out-set, I would like to point-out that the reference, which has been made to this Court, is regarding whether the action of the Executive Engineer, HPPWD, Division No.II, Shimla in not allowing the petitioner to resume his duties w.e.f. 5.7.2007, on production of medical fitness certificate, is legal and justified. In other words, as per the reference, the petitioner is required to prove that it was illegal and unjustified on the part of the respondent not to have allowed him to resume duties w.e.f. 5.7.2007. However, when regard is given to the statement of claim, filed by him, it appears that the petitioner alleges that his services had been terminated/dispensed with by the respondent from Feb., 2002, in violation of the Act. It has also been alleged by him that he had been appointed as daily waged beldar w.e.f. 5.6.1992.

9. Before, I proceed further, I may clarify that his Court is required to answer the reference which has been made by the appropriate government and not the case as set-up by the petitioner whereby he alleges that his services had been illegally terminated/dispensed with w.e.f. Feb., 2002.

10. Since, the petitioner himself alleges that his services had been terminated in the month of Feb., 2002, this clearly goes to show that he ceased to be in the employment of the respondent, as daily waged beldar, from the said month of Feb., 2002. In the rejoinder, which has been filed by the petitioner, he has stated that since, he was suffering from serious disease of seizure disorder, he had started treatment w.e.f. 1.1.2001 which continued till 5.7.2007, when he was given fitness certificate to resume his duties. The petitioner has also brought, on record, the medical certificates

mark A-1 to mark A -37, which go to show that he had been advised medical rest on the dates as have been mentioned therein. The last certificate, which has been produced by him, is mark A-1/36, which goes to show that the petitioner had been advised complete rest for the periods w.e.f. 1.1.2002 to 5.7.2007 and further that he was fit to resume duties w.e.f. 6.7.2007. As per this certificate, the petitioner had been advised rest for 2011 days. Since, the petitioner has admitted in his rejoinder that he had remained under treatment and that when he was declared fit on 5.7.2007, he had submitted the medical certificates for the entire periods as well as fitness certificate, issued by Doctor M.M Bhalla, in the office of the respondent department, this goes to show that during the period, he had remained under treatment, he did not attend his work/job. Thus, his contention, as taken in the petition, that his services were illegally terminated in the month of Feb., 2002, is totally false.

11. Petitioner when appeared in the witness box, as PW-1) has stated that w.e.f. 1992, till Feb., 2002, he had worked as beldar. In every year, he had been completing 240 days. On 1.1.2001, he fell ill and in this regard, informed the department. At that time, he had been told by the department that after having got treatment of the ailment, he was to be taken back in the job/service. From Jan., 2001 to 5.7.2007, he had remained ill and got himself treated from Bhalla Clinic, Solan. The medical certificates, which he had submitted to the department and the photocopies of which were retained by him, are mark A-1 to mark A-1/36. He had also been got medically examined by the department from a medical board and in this regard, the opinion/report is Ex. PW-1/A. In the cross-examination, he admitted to have joined the respondent department on 8.6.1992 and worked till October, 2001. He had been signing the muster rolls. He had denied to have informed the department regarding his illness. He admitted that medical certificate from 1.1.2002 to 5.7.2002, is mark A-1/36. During that period (1.1.2002 to 5.7.2002), he had been unfit. He denied that all the medical certificates were got prepared by him falsely. Muster roll mark R-2, pertains to 1.9.1997 to 30.9.1997, in which his name has been shown at serial number 8. In this muster roll, he has been marked present on 16-17-18, September, 1997 and that for the said period, he had also received the wages. He admitted that his medical certificate, mark A-22, is wrong. He denied that a private practitioner could not have issued a medical certificate for seven years.

12. Shri Narender Kumar (RW-1) has stated that the petitioner had been engaged, as beldar, on 8.6.1992 and worked till October, 2001, when he stopped coming to do job. His mandays chart mark R-1, is Ex. Ex. RW-1/A. The petitioner had not informed the department when he left the job. He had not completed 240 days before leaving the job. In the year, 2007, the petitioner had submitted medical certificates mark A-1 to mark A-35 to the department for approval. Those certificates were for the period 1997 to 2002. For getting those certificates verified/to get the opinion of medical board, the petitioner was asked to get himself examined and the certificate which has been issued by the medical board, is Ex. PW-1/A. In the cross-examination, he admitted that the petitioner had worked from 5.6.1992 to Feb., 2002, as per record. The respondent department had not called the petitioner to join duties. He admitted that on 5.7.2007, the petitioner had submitted medical certificates mark A-1 to mark A-35, to the department along-with fitness certificate mark A-1/36. He admitted that on the submission of the certificates, by the petitioner, he had not been called for job by the department. He admitted that as per Ex. PW-1/A, the Medical Board had given opinion that the petitioner for the last eight years, had been suffering from illness and that medical certificates mark A-1 to mark A-35 are correct.

13. From the photocopies of the medical certificates and also from the evidence of the petitioner, it comes, on record, that the petitioner had fallen ill and started taking treatment and while doing so, he was advised medical rest for different periods, as have been mentioned in the medical certificates, as aforesaid. Here, it is required to be noted that when on 5.7.2007, the petitioner had produced medical certificates in the office of the respondent alongwith fitness

certificate as per which he was declared fit to join duties w.e.f. 6.7.2007, the department, in order to get those medical certificates verified had requested CMO Solan for getting constituted a medical board for the medical examination of the petitioner and also to give its opinion regarding the medical certificates submitted by the petitioner. It has been stated by Shri Narender Kumar (RW-1) that the opinion which had been given by medical board is Ex. PW-1/A. From the opinion of the medical board, it is revealed that when on 16.2.2012, the petitioner had appeared before the Medical Board, it was found that he had suffered from seizure disorder and off treatment for past eight years. By getting obtained this medical opinion (Ex. Pw-1/A), the case of the petitioner that he had been undergoing treatment and advised rest, as per medical certificates, aforesaid, stands fortified. Thus, when the evidence, in its totality, is considered, it can be said that the petitioner had remained absent from duties w.e.f. October, 2001 as is evident from his mandays chart Ex. RW-1/A. As far as this absence of the petitioner is concerned, it cannot be said to be justified in the absence of leave of one kind or the other having been sanctioned in his favour. I may also like to point-out that if the petitioner had informed the department concerned, in writing, along-with medical certificates, justifying his absence, on medical grounds, the things could have been different. Moreover, it is not the term of reference, before this Court, as to whether the petitioner is required to be considered on duties during the period he was undergoing treatment. The only point which has to be decided is whether on 5.7.2007, the petitioner was illegally and unjustified disallowed by the Executive Engineer, HPPWD Shimla to resume his duties. Here, I may mention that since the petitioner had submitted his medical certificates which, when got verified from the Medical Board, constituted by CMO, Solan, were found to be justified as per opinion Ex. PW-1/A, I am of the firm view that, on record, it stands duly proved that that on account of his illness, the petitioner was unable to resume his duties prior to 6.7.2007. On the face of the medical certificates, produced by the petitioner, the photocopies of which are mark A-1 to mark A-1/36 and also the opinion of the Medical Board, Ex. PW-1/A, the action of the respondent in not allowing the petitioner to join his duties w.e.f. 5.7.2007, is not justified and thus held to be illegal.

14. Although, it has been urged on behalf of the respondent that from the evidence, on record, including the statement of the petitioner (PW-1), it stands proved that the medical certificates relied upon by the petitioner (mark A-2), as per which he had been advised bed rest from 16.9.1997 to 19.9.1997, is false because on the said dates, his presence was marked in the muster roll but on this score, the case of the petitioner that he had been undergoing treatment w.e.f. 1.1.2002 to 5.7.2007, cannot be disbelieved, particularly, when the medical board as per its opinion Ex. Pw- 1/A, has supported that for the last eight years, the petitioner had been suffering from seizure disorder.

15. Consequently, for what has been stated and observed above, my answer to this issue is in “yes”.

Issue no.2.

16. Since, as per the reference, the action of the respondent in not allowing the petitioner to resume his duties w.e.f. 5.7.2007, on production of medical fitness certificate, has been held by me to be illegal and unjustified, I am of the view that from the said date, the petitioner can be considered, in service, for the purpose of his seniority and continuity in service. The petitioner is not entitled to any back wages. I may reiterate that the period of absence w.e.f. 1.1.2002 to 5.7.2007, cannot be ordered to be regularized by this Court. Accordingly, this issue is decided partly in favour of the petitioner.

Issue no.3.

17. An objection has been taken by the respondent that the claim petition is not maintainable. It is to be noted that in support of such objection, the respondent has alleged that the

claim of the petitioner is hit by delay & latches. I may mention that when the petitioner was not allowed to resume his duties w.e.f. 5.7.2007, on which date, he had produced the medical certificates etc., he raised a demand notice and when the conciliation failed, a reference was caused to be made to this Court by the appropriate government. When the reference was received, in this Court and notices were issued to the parties, the petitioner has filed his statement of claim. It is not understandable as to why his such claim petition is not maintainable, particularly, when it has been filed consequent upon the reference, made to this Court. Thus, I hold this petition to be legally maintainable and my answer to this issue is in “no”

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and as such the respondent is directed to reinstate the petitioner w.e.f. 5.7.2007 but without back-wages. The petitioner is not held entitled to his previous seniority i.e w.e.f. the date of his initial engagement till 5.7.2007. The petitioner is only held entitled to seniority and continuity w.e.f. 5.7.2007. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 13th day of August, 2014.

By order,
(A.S JASWAL)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

पंचायती राज विभाग

अधिसूचना

शिमला-171009, 26 मई, 2014

संख्या:पीसीएच-एचए(3)4 / 07-4087.92.—क्योंकि विभाग में, जिला कांगड़ा के विकास खण्ड कांगड़ा की ग्राम सभा समेला के मुख्यालय को स्थान समेला से बदलकर कसवाड़ा (समेला) में स्थापित करने हेतु प्रस्तावना विचाराधीन है;

अतः हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (वर्ष 1994 का 4) की धारा 3 की उप-धारा (2) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए जिला कांगड़ा के विकास खण्ड कांगड़ा की ग्राम सभा समेला के मुख्यालय को स्थान समेला से बदलकर कसवाड़ा (समेला) में स्थापित करने हेतु प्रस्ताव करती है और यथा अपेक्षित संबंधित ग्राम सभा सदस्यों की जानकारी एवं सार्वजनिक आक्षेप आमंत्रित करने के लिए हिमाचल प्रदेश के राजपत्र में प्रकाशित करने एवं जिला कांगड़ा के उपायुक्त को, उक्त बारे सुझावों/आक्षेपों को प्राप्त करने तथा उन पर विचार करने के लिए प्राधिकृत करने के आदेश प्रदान करती हैं;

यदि ग्राम सभा समेला के मुख्यालय को बदलने बारे उक्त प्रस्ताव के संबन्ध में, संबन्धित ग्राम सभा सदस्यों को कोई आपत्ति/सुझाव प्रस्तुत करना हो तो वे अपने आक्षेप या सुझाव इस अधिसूचना के प्रकाशन के दिनांक से 30 दिनों की अवधि के भीतर उपायुक्त कांगड़ा को प्रस्तुत कर सकेंगे। उपरोक्त नियत अवधि के अवसान के पश्चात् आक्षेप या सुझाव, जो कोई भी हों, ग्रहण नहीं किए जाएंगे;

राज्य सरकार, जिला कांगड़ा, विकास खण्ड कांगड़ा की ग्राम सभा समेला के मुख्यालय को बदलने के सम्बन्ध में अन्तिम अधिसूचना, उपायुक्त कांगड़ा की सिफारिश के दृष्टिगत जारी करेगी।

आदेश द्वारा
हस्ताक्षरित/—
अतिरिक्त मुख्य सचिव (पंचायती राज)।

पंचायती राज विभाग

अधिसूचना

शिमला-171009, 2 मई, 2014

संख्या:पीसीएच-एचए(3)18/07-2970.73.—इस विभाग की समसंख्यक अधिसूचना दिनांक 6 दिसम्बर, 2013 के अन्तर्गत, जिला मण्डी के विकास खण्ड बल्ह की ग्राम सभा कसारला के मुख्यालय को स्थान कसारला से बदलकर कसारला स्थित धड़वाहन में स्थापित करने हेतु प्रस्तावना द्वारा सम्बन्धित ग्राम सभा सदस्यों से आक्षेप एवं सुझाव आमंत्रित किए गए थे तथा उपायुक्त, जिला मण्डी को इस सम्बन्ध में आक्षेप/सुझाव प्राप्त करने और उन पर विचार करने के उपरान्त अन्तिम सिफारिश प्रस्तुत करने के लिए प्राधिकृत किया गया था;

और क्योंकि उपरोक्त अधिसूचना में निर्दिष्ट अवधि के भीतर ग्राम सभा 'कसारला' के मुख्यावास को 'कसारला' से बदलकर 'कसारला स्थित धड़वाहन' में स्थापित करने के संदर्भ में कोई भी आक्षेप/सुझाव प्राप्त नहीं हुआ है;

अतः हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (वर्ष 1994 का अधिनियम संख्यांक 4) की धारा 3 की उप-धारा (2) के खण्ड (ग) द्वारा प्रदत्त शक्तियों के अधीन, जिला मण्डी के विकास खण्ड बल्ह की ग्राम सभा 'कसारला' का मुख्यावास 'कसारला' से बदलकर 'कसारला स्थित धड़वाहन' में स्थापित करने के सहर्ष आदेश प्रदान करती है।

आदेश द्वारा,
हस्ताक्षरित/—
अतिरिक्त मुख्य सचिव (पंचायती राज)।

ब अदालत श्री गुरमीत जी० नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला, हिमाचल प्रदेश

नेहा पुत्री स्व० श्री बाबू राम, निवासी वार्ड नं० 3, नगर परिषद् रोहडू, तहसील रोहडू, जिला शिमला, हिमाचल प्रदेश प्रार्थिया।

बनाम

आम जनता

उनवान मुकद्दमा :

प्रार्थिया व उसके भाई का नाम नगर परिषद् रोहडू के परिवार रजिस्टर में दर्ज किए जाने बारे।

इस कार्यालय में कुमारी नेहा पुत्री स्व० श्री बाबू राम, निवासी वार्ड नं० 3, नगर परिषद् रोहडू, तहसील रोहडू, जिला शिमला, हिमाचल प्रदेश ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसका व उसके भाई का नाम व जन्म तिथि नगर परिषद् रोहडू के परिवार रजिस्टर में अज्ञानतावश आज तक दर्ज नहीं किया गया हैं तथा उनके नाम को दर्ज करने के आदेश नगर परिषद् रोहडू को दिए जावे। प्रार्थिया व उसका भाई रोहडू में ही निवास करते हैं। प्रार्थिया व उसके भाई का नाम व जन्म तिथि निम्न प्रकार से है:—

क्रम संख्या	नाम	परिवार के मुखिया से सम्बन्ध	जन्म तिथि
1.	नेहा	स्वयं	8-1-1993
2.	अमन कुमार	भाई	23-4-1997

अतः इस इशतहार द्वारा आम जनता का सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि नगर परिषद् रोहडू में दर्ज करने में किसी भी प्रकार का एतराज व उजर हो तो वह दिनांक 15-10-2014 को असालतन या वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थिया व उसके भाई का नाम व जन्म नगर परिषद् में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नगर परिषद् रोहडू में नाम व जन्म तिथि दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 16-9-2014 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गुरमीत जी० नेगी,
कार्यकारी दण्डाधिकारी,
तहसील रोहडू, जिला शिमला, हिमाचल प्रदेश।

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),
District Shimla, Himachal Pradesh**

Shri Tashi Tsewang s/o Shri Tsering Chopel, r/o MD 26, Tibetan Handicraft Society
Kasumpti, Tehsil and District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Shri Tashi Tsewang s/o Shri Tsering Chopel, r/o MD 26, Tibetan Handicraft Society Kasumpti, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13 of the Birth and Death Registration Act, 1969 to enter his date of birth of Shri Tashi Tsewang s/o Shri Tsering Chopel, r/o MD 26, Tibetan Handicraft Society Kasumpti, Tehsil and District Shimla, Himachal Pradesh in the record of Birth and Death in the office of Sub-Registrar MC Shimla as per recommendation from CMO Shimla vide No. HFW-SML-B&D/ST /12/2343, dated 20-9-2014 as following :

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Shri Tashi Tsewang	s/o Shri Tsering Chopel	2-11-1974

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of date of birth of above in the record of MC Shimla, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 20-9-2014 under my signature and seal of the court.

Seal.

GIAN SAGAR NEGI,
Sub-Divisional Magistrate,
Shimla(R), District Shimla, Himachal Pradesh.

**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Smt. Mamta w/o Sh. Ashok, r/o MC Quarter No. 12 Ghar-Ki-Line, Ruldu Bhatta, Lakkar Bazar, Shimla, Himachal Pradesh .. *Applicant.*

Versus

General Public

.. *Respondent.*

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas, Smt. Mamta w/o Sh. Ashok, r/o MC Quarter No. 12 Ghar-Ki-Line, Ruldu Bhatta, Lakkar Bazar, Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of name of her daughter, namely Saneha date of birth 14-5-2009 in the record of Municipal Corporation, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court from one month from the publication of this proclamation failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and the seal of the Court on this 8th day of September, 2014.

Seal.

G. C. NEGI,
*Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh.*